

Appendix

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Clerk, U. S. Dist. Court
San Francisco

**United States District Court
for the Northern District of California**

Civil Action No. 52076

Anita Valtierra, Irene Valtierra, Jenny Valtierra, Robert Valtierra, Carol Valtierra, Cecilia Valtierra, Bertha Valtierra, Anthony Valtierra, Dorether Anderson, Dale Robert Anderson, Judy Lea Anderson, John Lee Anderson, Della Anderson, Jeff Alexander Anderson, Dolores Anderson, Gwendolyn Anderson, Thomas Anderson, Angie Duarte, Pauline Duarte, Jesus Duarte, Alfred Duarte, Eddie Duarte, all on behalf of themselves and others similarly situated, Plaintiffs,

vs.

The Housing Authority of the City of San Jose, a public entity; Rodmar H. Pulley, individually and as Executive Director of the Housing Authority of the City of San Jose; Mary R. Boyce, individually and as Chairman of the Board of Commissioners of the Housing Authority of the City of San Jose; Walter Rector, individually and as Vice-Chairman of the Board of Commissioners of the Housing Authority of the City of San Jose; David Reiser; Allen Bellandi; and Sam Obregon, individually and as Commissioners of the Housing Authority of the City of San Jose; The City Council of the City of San Jose; Ronald James, individually and as Mayor of the City of San Jose; Virginia C. Shaffer; Joseph Colla; Walter V. Hayes; David G. Goglio; and Kirk Gross, individually and as Councilmen for the City of San Jose; United States Department of Housing and Urban Development; George Romney, individually and as Secretary of the Department of Housing and Urban Development, Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, THREE JUDGE COURT REQUESTED

Plaintiffs Allege as Follows:

The Issue

1. This is an action to invalidate Article 34 of the California Constitution which prohibits any local governing body or housing authority from constructing or acquiring a federally financed low-income housing project without a majority vote of the population in the affected area. Such voter approval is required for housing for low-income persons but not for any other income group. The effect of requiring majority approval has been to sharply curtail the construction of decent and adequate low-income housing units.

Jurisdiction

2. Jurisdiction is conferred on this Court by 28 U.S.C. 1331, 1343, and 42 U.S.C. 1983, and by the Privileges and Immunities, Equal Protection and Supremacy Clauses.

3. The amount in controversy herein exceeds \$10,000.00 for each of the plaintiffs individually and for each member of their class in that the deprivation of decent, safe and sanitary housing causes damage to them in excess of that sum. But for the operation of Article 34, plaintiffs herein would have been benefited by the expenditure of federal funds for low-income housing in San Jose in excess of 17 million dollars. A three judge court is sought pursuant to 28 U.S.C. 2281.

Parties

4. The named plaintiffs are all citizens of the United States and residents of the City of San Jose. All are of low-income and reside in unsafe, unsanitary or overcrowded housing. All are on the waiting list for placement through the Housing Authority of the City of San Jose and have been on said list for more than one year.

5. Plaintiff Anita Valtierra and her seven minor children live in a one bedroom apartment owned by the City of San Jose. The Valtierras have suffered greatly from the smallness of their home. The entire family sleeps in a room $11\frac{1}{2}$ feet by $10\frac{1}{2}$ feet. The daily routine of the family is dictated by the confines of the apartment: the smaller children must stay in bed until the older ones have dressed and left for work or school; as they cannot all fit in the tiny kitchen-dining area, the family must eat meals in shifts; all the children cannot be bathed on any one evening because of insufficient water and space in the bathroom, the meagre clothing possessed by the family cannot be closeted in the one closet and must be stored in cardboard boxes in the one small bedroom. The Valtierra family was on the "emergency" waiting list of the San Jose Housing Authority before they found their present home, but they were removed from that list when they found even the oppressively overcrowded apartment because emergency cases are defined as only those persons who are totally without housing, *e.g.*, persons living in tents, cars, and parks. See plaintiff Valtierra's affidavit attached hereto, marked Exhibit A.

6. Plaintiff Dorether Anderson is the mother of eight children who all live with her in a three bedroom, one bathroom home. The home is not only overcrowded, but is infested with cockroaches. Plaintiff Anderson has been looking for another home for eight years. She has been on the waiting list of the San Jose Housing Authority continuously since November, 1966. See plaintiff Anderson's affidavit attached hereto, marked Exhibit B.

7. Plaintiff Angie Duarte is the head of a household of four minor children. She has been on the waiting list of the Housing Authority for more than one year. She left a residence which was dangerously deteriorating only to find that it was impossible for her to obtain a home for her family within her income range. When she did find a vacant apartment, the landlord invariably told her that he would allow only two children in each apartment. In desperation, plaintiff Duarte sent her two oldest children to stay with their grandmother in Arizona. She then was able to rent her present two bedroom apartment. She has re-united her family now, but lives in constant fear that the landlord will evict her as soon as he learns that there are four children living in the apartment. This fear is particularly oppressive because plaintiff Duarte knows it is impossible to find another apartment suitable to her needs. See plaintiff Duarte's affidavit attached hereto, marked Exhibit C.

8. Minor plaintiffs Irene Valtierra, Jenny Valtierra, Robert Valtierra, Carol Valtierra, Cecelia Valtierra, Bertha Valtierra, and Anthony Valtierra are

represented in this action by their general guardian, Anita Valtierra. Minor plaintiffs Dale Robert Anderson, Judy Lea Anderson, John Lee Anderson, Della Anderson, Jeff Alexander Anderson, and Dolores Anderson are represented in this action by their general guardian, Dorether Anderson. Minor plaintiffs Pauline Duarte, Jesus Duarte, Alfred Duarte, and Eddie Duarte are represented in this action by their general guardian, Angie Duarte.

9. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs and the class they represent consist of all persons who are citizens of the United States and who are on the waiting list of the Housing Authority of the City of San Jose. There are questions of law and fact common to the plaintiffs and the members of the class they represent affecting the validity of Article 34 and these common questions predominate this action. The members of the class are so numerous as to make joinder of all of them impracticable. The claims of plaintiffs are typical of the claims of all members of the class and plaintiffs fairly and adequately represent the claims of all members of the class.

10. Defendant Housing Authority of the City of San Jose [hereinafter Housing Authority] is a public entity established pursuant to California Health and Safety Code §§ 34200 *et seq.* Defendant Pulley is the Executive Director of the Housing Authority. Defendants Boyce, Rector, Reiser, Bellandi and

Obregon are duly appointed commissioners of the Housing Authority. All are sued individually and in their official capacity.

11. Defendant City Council of the City of San Jose [hereinafter City Council] is the governing body of the City of San Jose. The Department of Housing and Urban Development cannot approve an application for a preliminary loan for a low-income housing project under 42 U.S.C. 1415(7) unless there has been an authorizing resolution by the City Council. Plaintiffs are informed and believe and on this basis allege that the City Council will not approve any contracts for the construction of public housing in San Jose unless and until the proposal is approved by the electorate in accordance with Article 34.

12. Defendants James, Mineta, Shaffer, Colla, Hays, Goglio, and Gross are the duly elected councilmen of the City Council. They are sued as individuals and in their official capacity.

13. Defendant Housing and Urban Development [hereinafter HUD] is a department of the Executive Branch of the United States Government. Defendant Romney is the Secretary of HUD. Plaintiffs are informed and believe and on this basis allege that defendant Romney, acting in his official capacity, will refuse to approve use of federal funds to aid the construction of new public housing units in San Jose unless and until the proposal is approved by the electorate in accordance with Article 34.

The Public Housing Program in California

14. In 1937, The Congress of the United States enacted the Housing Act of 1937, 42 U.S.C. 1401 *et seq.*, which declares it to be the policy of the United States to employ its funds and credit to remedy "the unsafe and unsanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of low-income . . . injurious to health, safety, and morals of the citizens of the Nation." The above policy is to be carried out by the Housing Assistance Administration [hereinafter HAA] of HUD. The HAA makes a preliminary loan to a local authority when the local governing body has by resolution made a finding of need for low-income units and has authorized the particular loan application. The preliminary loan is used to pay for an option on a site and for other development expenses. Once the project plans have been developed and approved by HAA, tax-free bonds guaranteed by the federal government are sold to the public.

15. California set up the structure necessary to take advantage of the federal program in 1938 when it enacted the Housing Authorities Law (Health and Safety Code §§ 34200 *et seq.*). This act provides that there is in every county and city a public body corporate and politic known as the housing authority of the county or city. The housing authority is without power to transact business unless the governing body of the county or city declares that there is a need for a housing authority. Once activated as provided in the statute, a housing authority is empowered

to borrow and accept financial grants from the federal government and to lease, construct or otherwise acquire housing units. In keeping with the federal requirements, the local housing authority submits a proposal to the local governing body for approval before it is sent to HAA.

16. In November, 1950, Article 34 was added to the California Constitution by initiative. Section 1 reads in part as follows:

No low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any state public body until, a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire the same, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.

The section goes on to define low rent housing project as one financed in whole or in part by the Federal Government or a state public body.

17. Article 34 nullifies the federal scheme for providing low income housing and the state procedures enacted to implement the federal scheme, 1) by imposing a burden not authorized or required by the federal statute; and 2) by conditioning the receipt of federal benefits by the underprivileged minority upon the unfettered discretion of the privileged majority.

18. Article 34 has had the effect of sharply curtailing the construction of new low-income housing

units in California. This effect is demonstrated by comparing California's rate of construction per low-income family group to that of three other states with a comparable low-income population: each of the other states has more than three times the per capita rate of California (California has constructed 23.4 low-income units per 1,000 low-income family groups compared with 60.1 per 1,000 in Pennsylvania, 66.7 per 1,000 in New York, and 73.1 per 1,000 in Illinois). See attached Affidavits of housing authority officials Marked Exhibits D, E, and H.

Public Housing in San Jose

19. On January 31, 1966, the Housing Authority of the City of San Jose was activated by resolution number 28714 of the City Council (a copy of which is attached hereto, marked Exhibit F). In said resolution, the City Council found that since there were unsanitary and unsafe housing accommodations in San Jose and since there was a shortage of safe and sanitary dwellings for persons of low-income to rent, there was a need for a housing authority to function.

20. San Jose is a rapidly growing metropolitan community. Much of its housing is old and deteriorated. A survey made by the Housing Division of the Santa Clara County Health Department in 1967 showed that 16 neighborhoods in the central area of San Jose had a significant number of blocks (3 or more) with substandard housing rates over 20%. This rate was considered by the Housing Division to be at the critical level. Besides new units needed

because of this deterioration, new units are needed because of rapid and sustained population growth.

21. The Housing Authority had a waiting list of 625 families at the end of July, 1969. Of those families, there were 164 "verified emergency applicants" who had been found to have no housing whatsoever.

22. In recognition of the critical housing shortage and pursuant to the requirements of Article 34, the City Council placed on the November, 1968, ballot a measure which would allow the Housing Authority to construct or acquire 1,000 units within the City. The units were to be scattered throughout the City in order to avoid racial and economic segregation.

23. On November 5, 1968, the said measure was defeated, 57,896 voters favoring and 68,527 opposing the measure. See Exhibit G, attached hereto.

For a First Claim

24. This action for declaratory relief is brought pursuant to 28 U.S.C. § 2201. Plaintiffs request a three judge court as required by 28 U.S.C. §§ 2281 and 2284. An injunction is prayed for pursuant to 42 U.S.C. § 1983.

25. Plaintiffs are entitled to relief since an actual controversy exists between the parties to this action, which controversy the plaintiff desires the Court to adjudge, defining and declaring the legal rights and duties of each party to the controversy.

26. Article 34 places a substantial burden upon plaintiffs in relation to other economic and racial

groups in their effort to secure decent, safe, and adequate housing within the City of San Jose. Such burden is imposed solely because plaintiffs are impoverished and for no legitimate governmental purpose.

27. Defendants herein have adhered to Article 34 by their policy and practice of refusing to process any application to HUD for funds to aid in the construction or acquisition of new low-income housing units unless and until Article 34 has been followed and a successful referendum has been accomplished.

28. The matter in controversy is whether the defendants' refusal denies plaintiffs the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

29. Plaintiffs and members of the class they represent are irreparably injured by the acts of defendants in that they are substantially burdened in their pursuit of safe, decent, and adequate housing as offered by the federal government in the United States Housing Act of 1937. The irreparable injury to plaintiffs and their class will continue unless and until defendants are enjoined by this Court. Plaintiffs have no adequate remedy at law.

For a Second Claim

30. Reference is made to Paragraphs 1-25, inclusive, and to Paragraphs 27 and 29, incorporating them herein by reference as if they were set out at length.

31. Article 34 creates an arbitrary condition on the plaintiffs' receipt of federal benefits conferred upon citizens of the United States by requiring that plaintiffs obtain the approval of the majority of the electorate in their community prior to receiving said benefits.

32. The matter in controversy is whether defendants' adherence to Article 34 deprives plaintiffs of their privileges and immunities as United States Citizens in violation of the Fourteenth Amendment to the United State Constitution.

For a Third Claim

33. Reference is made to Paragraphs 1-25, inclusive, and to Paragraphs 27 and 39, incorporating them herein by reference as if they were set out at length.

34. Article 34 conflicts with and is contrary to the United States Housing Act of 1937, in that it constitutes an additional and contrary burden on the ability of the federal government and local governmental entities to contract for the construction or public housing for low-income persons, contrary to the intent of Congress.

35. The matter in controversy is whether the defendants' adherence to Article 34 and the resultant conflict with the federal scheme is contrary to Article VI, Clause 2 (the "Supremacy Clause") of the United States Constitution.

Wherefore, Plaintiffs pray as follows:

1. That this Court declare Article 34 of the California Constitution void and of no effect.

2. That this Court enjoin the defendants, and each of them from refusing to proceed with the necessary steps leading to the construction of the 1,000 public housing units proposed by the Housing Authority of the City of San Jose in 1968, unless said units are approved in a voter referendum.

3. That this Court enjoin defendants, and each of them, from enforcing, following abiding by or relying on any of the provisions of Article 34 of the California Constitution.

4. For such other and further relief as is appropriate under the facts pleaded above or elicited at trial.

Dated: August 27, 1969.

/s/ Diane V. Delevett,
Attorney for Plaintiffs,
22 Martin Street,
Gilroy, California 95020

(Notary affidavit omitted)

Exhibit A

AFFIDAVIT

State of California,
County of Santa Clara—ss.

Anita Valtierra, being sworn says:

I am the mother of seven minor children: Irene Valtierra, age 16; Jennie Valtierra, age 15; Robert Valtierra, age 13; Carol Valtierra, age 11; Cecilia Valtierra, age 10; Bertha Valtierra, age 9; and Anthony Valtierra, age 8. I am a citizen of the United States and live with my family in the County of Santa Clara, City of San Jose. We all live together in a one bedroom apartment which belongs to the City of San Jose.

We were placed in that apartment when we could find no other place to live and were on the "emergency" waiting list for the Housing Authority. At that time I had all my children living in various homes of friends and relatives. The only way that I could reunite my family was to accept this tiny apartment. I thought since I had been on the waiting list of the Housing Authority, I would be provided with a larger home soon. I have now been on the waiting list for over a year and I continue to pay the rent of \$75.00 per month plus unsecured property taxes of \$21.00 per year for the one bedroom apartment. I wondered why I was removed from the emergency waiting list and I was told by an official of the Housing Authority that I could no longer be considered an emergency because there was some roof over my head.

Emergency families were only those that had no home at all.

When I have looked for other places to move, the only five bedroom homes available were renting at between \$175.00 and \$200.00 per month. With first and last month's rent and a cleaning deposit of approximately \$75.00, I would be required to pay a minimum of \$425.00 before I could move into an adequate home. In addition to the cost, five bedroom houses are very difficult to find because there just aren't enough of them being built to house all the families with many children.

My income is \$355.00 per month which I receive from the Welfare Department during the non summer months. My basic need has been computed by the Welfare Department to be \$516.00 per month, so I receive about \$148.75 less than the amount my family really needs. I can make up some of the difference between my basic need and what the welfare will pay by working during the summer in the cannery. When I work in the cannery, I earn about \$360.00 per month. The welfare gives me a supplement which brings my income close to my basic need of \$516.00 per month. During these months I can buy my family clothing and other items that they have needed during the year but which we could not afford to buy.

If we were placed with the Housing Authority, we would receive a five bedroom apartment for approximately \$97.00 per month. It would be guaranteed to be safe, clean and adequate. The Housing Authority can never give me any hope as to when I will be

placed in such a home, however, because they have such a long waiting list and they just tell me that I should keep phoning. They have never shown me a place nor have I been able to find a home with the landlord willing to lease to them.

/s/ Anita G. Valtierra

Subscribed and sworn to before me this 16th day of August, 1969.

(Seal)

/s/ Marina B. Fontanilla,
Notary Public in and for the
County of Santa Clara, Calif.

My commission expires February 10, 1973.

Exhibit B

AFFIDAVIT

State of California,
County of Santa Clara—ss.

Dorether Anderson, being sworn, says:

I am a citizen of the United States and a resident of San Jose. I live in a small three bedroom home with my eight children. For this house we pay \$125.00 per month, even though it is over crowded and infested with cockroaches. I have been trying to move to a larger and better home for eight years.

I have been on the waiting list of the Housing Authority continuously since I was found eligible in November of 1966. Since I have been on the waiting list, I have never been referred to a home and I have never been able to find a home suitable for my family where the landlord would lease to the Housing Authority.

When I look at five bedroom homes on my own, I find that they rent between \$200.00 and \$210.00 per month. Many of them require the payment of the first and last month's rent as well as a cleaning deposit of \$75.00. This means that I would need \$475.00 to \$500.00 to move into one of these homes. I earn approximately \$50.00 to \$75.00 per month as a domestic maid. The most the welfare can give me in addition is \$330.00 per month. The rent alone on a five bed-

room house would cost about 50% of my monthly income.

/s/ Dorether Anderson

Subscribed and sworn to before me this 16th day of August, 1969.

(Seal)

/s/ Marina B. Fontanilla,
Notary Public in and for the
County of Santa Clara, Calif.

My commission expires February 10, 1973.

Exhibit C

AFFIDAVIT

State of California,
County of Santa Clara—ss.

Angie Duarte, being sworn, says:

I am a citizen of the United States and a resident of San Jose, California. I live in a two bedroom apartment with my four children; Pauline Duarte, age 13; Jesus Duarte, age 11; Alfred Duarte, age 7; and Eddie Duarte, age 2. I have been on the waiting list of the Housing Authority of the City of San Jose for over a year.

I have always had a hard time finding a home for my family that I could afford. I had to move from my last home because it was in such a terrible condition that I knew it was not good for my children. Once I moved out, however, I found that there were no places available for a family of five that I could afford. The landlords of the smaller places that I could afford to rent would turn me down when they saw I had four children. Finally, I had to send two of my children to Arizona to stay with my mother-in-law so I could get an apartment that would take two children. Having found a two bedroom apartment, I have now brought my other two children back with me. I live in fear that I will be evicted when the landlord finds out that there are actually four children living in the apartment.

For my present small apartment I have to pay \$140.00 per month. This is very difficult for me to pay for because my monthly income as a cashier-waitress is only about \$270.00 plus a welfare supplement which brings the total to \$443.12 per month. If I were living with the Housing Authority my rent would be less than \$100.00 per month. With lower rent I would have enough to buy my children more clothing and other necessities that I now cannot afford.

Since I have been on the waiting list of the Housing Authority for over a year, I am beginning to lose hope that they will ever be able to find a house for us unless new places with more bedrooms are built. If I am evicted, I fear that I may either have to send my children back to Arizona or move to a dangerous and dirty place in order to find another place to live.

/s/ Angie Duarte

Subscribed and sworn to before me this 16th day of August, 1969, at San Jose, California.

(Seal)

**/s/ Marina B. Fontanilla,
Notary Public in and for the
County of Santa Clara, Calif.**

My commission expires February 10, 1973.

Exhibit D

AFFIDAVIT

State of California
County of Fresno—ss.

Fergus P. Cambern, being sworn, says:

I am the executive director of both the housing authority for the County of Fresno and the housing authority for the City of Fresno. I'm also the secretary for the Board of Commissioners for both housing authorities. In my present position I have been able to watch the effect of Article 34 on our various programs.

In the City of Fresno the housing authority has 1,000 families on their waiting list. It is my opinion that this list would include more names if it were not for the size of the waiting list and the fact that people give up asking after they have been turned down for a long period of time. Under the city program, we have 966 units which were acquired or approved prior to the effective date of Article 34 (no new units have been built since 1954) and 369 units under lease. We also have authorization to lease 500 more units if we can find them within the city. All of our available units are occupied and there does not seem to be any way to obtain 1,000 units for the families on our waiting list.

Article 34 was, in my opinion, added to the California Constitution in order to stop the public housing program. It did just that in Fresno. We have attempted to have two referenda in the City of Fresno

and have been defeated in both. The first referenda, in 1962, was for 400 units. The second was for 1,000 units in April of 1969. In both cases the city council and the housing authority agreed that the additional units were desperately needed and that their construction and acquisition would benefit the city. Nevertheless, the voters decided that they would not approve the construction or acquisition. The ballot measure in April, 1969, proposed 1,000 units to be scattered throughout the city. The undercurrent of the opposition to the proposal was caused by fear by middle and upper income people that minority and low income families would be moved into their neighborhood.

Direct construction or acquisition is the only way the housing authority can take care of the segment of society that industry cannot afford to take care of. The leasing program will not take care of the increased need which results from deteriorating old housing and influx of new population. Rising construction costs and costs of land mean that the housing authority is expected to pay higher rent than it is authorized to pay.

/s/ Fergus P. Cambern

Subscribed and sworn to before me this 25th day of August, 1969, at Fresno, California.

(Seal)

/s/ Opal C. Grimes,
Notary Public in and for the
County of Fresno, Calif.

My commission expires June 1, 1973.

Exhibit E

AFFIDAVIT

State of California

County of Sacramento—ss.

Harry E. Zollinger, being sworn says:

I am the executive director for the Housing Authority of the City and County of Sacramento. I have held this position since April of 1968. As Executive Director I have responsibility for placing individuals and families of low income in safe, decent and adequate housing which is within their financial reach.

On the active waiting list as of July 15th, 1969, there were 2,862 family groups. The following represents the number of family groups waiting for the particular bedroom sizes specified:

Bedrooms	Family Groups
1	398
2	896
3	978
4	447
5	112
6	24
7 + bedrooms	7
Total	2,862

Article 34 has made it almost impossible for us to fulfill the need documented above because Article 34 requires a political campaign and low-income families are not attractive political candidates. We have only

been able to obtain referendum approval for 800 units for disabled and elderly persons. These units will help slightly with the 1 and 2 bedroom need expressed above, but will do nothing to help the larger family groups. There simply do not exist enough units to house the families on the active waiting list as well as those thousands who have not formally applied with the Housing Authority. There will be some new construction of approximately 200 units but with the rising interest rates and costs of construction, the Housing Authority cannot afford to pay the rental required by the developers to make a profit on the new construction. Even if this were not true, 200 units would only make a slight dent in the tremendous need for low-income housing that exists in our City and County.

The only way we can adequately meet our needs is to acquire or construct units directly with financial assistance from the Department of Housing and Urban Development. Article 34 is now effectively blocking our use of this assistance.

/s/ Harry E. Zollinger

Subscribed and sworn to before me this 19th day of August, 1969.

(Seal)

/s/ Lorraine V. Minisan,
Notary Public in and for the
County of Sacramento, Calif.
My commission expires April 14, 1972.

Exhibit F

RESOLUTION No. 28714

Resolution of the Council of the City of San Jose
Appointing Commissioners of the Housing Authority of the City of San Jose, and Directing the Mayor to Certify Said Appointments and to Designate the First Chairman.

Be It Resolved by the Council of the City of San Jose:

Whereas, the Council of the City of San Jose has hertofore adopted its Resolution No. 28614 wherein it determined, found and declared, in pursuance of the Housing Authorities Law as amended, that:

(a) Insanitary and unsafe inhabited dwelling accommodations exist in the City of San Jose, California;

(b) There is a shortage of safe and sanitary dwelling accommodations in the City of San Jose, California, available to persons of low income at rentals they can afford;

(c) There is need for a housing authority to function in the City of San Jose, California; and

Whereas, no Commissioners have as yet been appointed for said Housing Authority, and the first chairman of said commissioners has not as yet been designated; Now, Therefore:

Section 1. In pursuance of the authority vested in the Council of the City of San Jose, California, by

Sections 34270 and 34272 of the Housing Authorities Law as amended, the five (5) persons hereinafter named are hereby appointed to serve as Commissioners of the Housing Authority of the City of San Jose from the 31st day of January, 1966, for the number of years appearing after their names respectively, to wit:

David Reiser One year
Norman Mineta Two years
Charles Davidson Three years
Walter Rector Four years
Mary Boyce Four years

Section 2. The City Clerk shall promptly notify the Mayor of the City of San Jose, California, of the adoption of this resolution.

The Mayor of the City of San Jose, California, is hereby authorized and directed to issue a certificate evidencing the appointment of the above named Commissioners and to file said certificate in the office of the City Clerk of the City of San Jose, California.

The Mayor of the City of San Jose, California, is hereby requested to designate, pursuant to the provisions of Section 34277 of the Health and Safety Code of the State of California, the first chairman from among the above named Commissioners, to issue his certificate evidencing the designation of said first chairman, and to file said certificate in the office of the City Clerk of the City of San Jose, California.

Section 3. This resolution is adopted pursuant to the provisions of Sections 34270 and 34272 of the

Health and Safety Code of the State of California,
and shall be effective immediately.

Adopted This 31st day of January, 1966, by the
following vote:

Ayes: Councilmen—Fischer, James, Miller, Solari,
Walsh and Pace.

Noes: Councilman—Shaffer.

/s/ J. L. Pace

Void if detached.

The attached is a full, true and correct
copy of the original now on file in
my office.

Attest:

Francis L. Greiner, City Clerk
of the City of San Jose, Calif.

By: /s/ Margaret Marumoto, Deputy

Dated: Aug. 19, 1969.

Exhibit G**RESOLUTION No. 34642**

**Resolution of the Council of the City of San Jose
Confirming Canvass by Registrar of Voters of
Santa Clara County of Special Municipal Elec-
tion on Housing Referendum**

Whereas, the Registrar of Voters of Santa Clara County has duly canvassed the votes cast in the City of San Jose (hereinafter called the "City") at the special municipal election consolidated with the State of California General Election held on November 5, 1968, in the City, by the electors of the City upon the measure hereinafter set forth, and has certified to this Council the result of the votes cast at said election upon said measure, which said certification is now on file in the office of the City Clerk of the City,

Now, Therefore, Be It Resolved by the Council of the City of San Jose as follows:

1. Said canvass by said Registrar of Voters as shown by said certification and the result of said election is hereby ratified, confirmed and approved.
2. At said election the following measure was submitted to the electors of the City and the number of votes cast in the City for and against said measure was as follows:

MEASURE (B): (Housing Authority Measure)	Shall the Housing Authority of the City of San Jose have authority to develop, construct,	TOTAL VOTE
and acquire, in any manner selected by said Authority, a low rent housing project (as defined in Article XXXIV of the California Constitution), consisting of not more than one thousand dwelling units, subject to the following conditions: (1) not more than four such dwelling units shall be situate in any one structure, (2) not more than one structure containing any such dwelling unit shall be situate on any one lot, and (3) such dwelling units shall be dispersed among various sections of the City so that not more than twenty-four such dwelling units shall be situate within a radius of fifteen hundred feet from any other such dwelling unit.	YES	57,896
	NO	TOTAL VOTE 68,527

This measure was ordered placed on the ballot by Resolution No. 34036 (note 4 aye and 1 nay—James, Mineta and Colla, for—Shaffer, against).

3. The total number of votes cast in the City at said special municipal bond election and the total number of votes given in each precinct and by absentee voters of the City for and against said measure was and is set forth in said canvass by said Registrar of Voters.

Adopted this 2nd day of December, 1968 by the following vote:

Ayes: Councilmen—Colla, Lisher, Mineta, Shaffer,
Solari, James.

Noes: Councilmen—None.

Absent: Councilmen—Miller.

Mayor
Ronald R. James

Attest:

City Clerk
Francis L. Greiner

Void if detached

The attached is a full, true and correct
copy of the original now on file in
my office.

Attest:

Francis L. Greiner, City Clerk
of the City of San Jose, Calif.

By: /s/ Margaret Marumoto, Deputy

Dated: Aug. 19, 1969.

Exhibit H

AFFIDAVIT

State of California
County of Santa Clara—ss.

Tyr V. Johnson, being sworn, says:

I am a Commissioner of the Housing Authority of Santa Clara County. Since the Housing Authority began operations in April, 1968, it has received 2,469 requests for housing assistance up to the end of July, 1969. It has provided housing for about 1/5 of those needing assistance. It has been unable to lease units to meet the need of the other 4/5 of the applicants. There are simply not enough dwelling units for the need in Santa Clara County. Hundreds more are needed for low-income families, but the Authority cannot rehabilitate, build or buy without going to a referendum as required by Article 34 of the state constitution.

The probabilities of success in a county-wide referendum campaign are very small indeed since it would require the concurrence of 14 separate city councils some of which do not even permit the Authority to lease within their boundaries let alone acquire. The acute need for more housing for low-income families is not being met by the private building industry, nor is it apt to be. Only by means of the "conventional" Housing Authority program of buying or building or rehabilitating will the supply of housing specifically for low-income families be increased.

The requirement imposed since 1950 by Article 34 that approval of the majority affluent community be obtained before any Federal funds are allowed to be used to increase the supply of housing for the minority low-income families effectively blocks the Housing Authority from carrying out its charge.

Quite aside from the fiscal aspects of the "conventional" programs, the referendum requirement provides an opportunity for the expression of the same racist attitudes as were so successfully marshalled in the passage of Proposition 14. In Santa Clara County the major ethnic minority is the Mexican-American Community with about 9.5% of the total population while Negroes account for only slightly more than 1% of the population. Nonetheless white race hostility can be successfully focused on this minority and expressed by a no vote on any proposition to assist them.

Only because the State Attorney General ruled that the leasing program of the 1965 Housing Act did not require a referendum was it possible to move the Board of Supervisors to activate a County Housing Authority in 1968 and then only after a year long campaign by advocates despite the unanimous recommendation of the Board's own Health and Welfare Commission and the example of the City of San Jose Housing Authority's successful leasing program. Had a referendum been required for the activation of the County Housing Authority, it is highly probable that there would be no Authority now with its limited leasing program to try and cope with the acute problem

of "providing decent, safe, and sanitary housing to all eligible families."

Until the Authority gains the legal power to increase the number of dwelling units specifically for low-income families, by rehabilitation, construction or purchase with available Federal funds thousands of eligible low-income families and elderly people will go without decent housing. Article 34 effectively blocks reaching that goal.

/s/ Tyr V. Johnson

Subscribed and sworn to before me this 24th day of August, 1969.

(Seal)

/s/ Marina B. Fontanilla,
Notary Public for the County
of Santa Clara, Calif.

My commission expires February 10, 1973.

Appendix A

PUBLIC HOUSING REFERENDA
THRU JUNE 14, 1968

Location	Housing Authority	No. of Units	VOTE		W-W L-L
			For	Against	
1951					
Broderick	Yolo County	50	194	80	W
Esparto	Yolo County	16	140	25	W
Gonzales	Monterey County	50	153	93	W
Knights Landing	Yolo County	10	98	13	W
Soledad	Soledad	50	197	35	W
Yolo	Yolo County	10	73	24	W
(Cacheville precinct)					
1952					
Hughson	Stanislaus Co.	30	125	203	L
Live Oak	Sutter County	30	198	211	L
Live Oak	Sutter County	30	318	270	W
Los Angeles	Los Angeles	10,000	264,431	388,682	L
Oakley	Contra Costa Co.	40	56	118	L
Patterson	Stanislaus Co.	40	100	139	L
1953					
Thornton	San Joaquin Co.	50	112	15	W
Thornton (FLC)	San Joaquin Co.	50	100	23	W
1954					
None					
1955					
Calexico	Imperial Co.	30	133	102	W
Oroville	Butte Co.	100	243	586	L
Oxnard	Oxnard	160	1,908	708	W
1956					
Biggs	Butte County	20	97	40	W
Calipatria	Calipatria	40	143	35	W
Cutler	Tulare County	30	191	41	W
East Nicolaus	Sutter County	10	20	26	L
Fort Bragg	Mendocino County	50	265	331	L
Fort Bragg	Mendocino County	50	788	828	L
Gridley	Butte County	30	289	224	W

Location	Housing Authority	No. of Units	VOTE		W-Won L-Lost
			For	Against	
Guadalupe	Santa Barbara Co.	20	315	43	W
Marin County	Marin County	300	28,467	16,645	W
North Richmond	Contra Costa Co.	150	278	106	W
Oakley	Contra Costa Co.	30	96	71	W
Patterson	Stanislaus Co.	30	364	149	W
Stockton	San Joaquin Co.	300	12,533	9,644	W
Sutter	Sutter County	20	52	208	L
Tracy	San Joaquin Co.	60	1,725	1,178	W
Tudor	Sutter County	20	35	35	L
Willits	Mendocino Co.	60	298	209	W
Yuba City	Sutter County	200	1,029	1,072	L
1957					
None					
1958					
Chico	Butte County	100	2,893	1,730	W
El Medio	Butte County	100	156	258	L
Firebaugh	Fresno County	40	271	47	W
Lompoc	Santa Barbara Co.	50	935	297	W
Oxnard	Oxnard	70	5,828	1,984	W
Port Hueneme	Port Hueneme	20	1,068	477	W
Ripley	Riverside Co.	50	83	37	W
Ventura	San Buenaventure Co.	80	8,031	2,024	W
1959					
Alisal	Monterey County	100	368	1,659	L
Broderick	Yolo County	26	252	219	W
Bryte	Yolo County	26	107	180	L
Huron	Fresno County	20	42	12	W
Mendota	Fresno County	50	74	12	W
Port Chicago	Contra Costa Co.	20	149	131	W
Rodeo	Contra Costa Co.	250	826	394	W
Winters Area	Yolo County	26	88	21	W
Woodland Area	Yolo County	72	87	5	W
Yuba City	Sutter County	100	358	868	L
1960					
Barstow	San Bernardino Co.	80	668	1,109	L
Calexico	Calexico	30	168	238	L
Eureka	Eureka	60	5,771	4,810	W
Richland	Sutter County	100	203	168	W
Stockton	San Joaquin Co.	200	12,999	12,050	W

Location	Housing Authority	No. of Units	VOTE		W-Vn L-Ln
			For	Against	
Thornton	San Joaquin Co.	25	114	127	L
Tracy	San Joaquin Co.	40	2,220	1,882	W
1961					
Ceres	Stanislaus Co.	30	172	67	W
Colton	San Bernardino Co.	40	903	606	W
Cutler	Tulare County	25	138	81	W
Fontana	San Bernardino Co.	60	1,025	1,308	L
Gonsalves	Monterey County	50	222	85	W
Goshen	Tulare County	20	61	56	W
Half Moon Bay	San Mateo County	50	183	93	W
Kings County	Kings County	275	3,393	3,162	W
Marin County	Marin County	300	5,799	8,461	L
New London	Tulare County	30	68	26	W
Oxnard	Oxnard County	150	4,021	2,066	W
Parlier	Fresno County	50	144	28	W
Richmond	Richmond	150	6,261	3,355	W
San Pablo	San Pablo	40	678	278	W
Stockton	San Joaquin County	100	5,326	10,015	L
Ventura	San Buenaventura Co.	75	8,330	2,100	W
1962					
Delano	Kern County	16	1,509	1,265	W
Dinuba	Tulare County	80	555	136	W
Fresno	Fresno City	400	10,375	25,784	L
Gridley	Butte County	20	487	385	W
Guadalupe	Santa Barbara Co.	20	145	49	W
Los Banos	Merced County	40	1,033	483	W
McFarland	Kern County	40	286	361	L
Orange Cove	Fresno County	40	205	48	W
San Bernardino	San Bernadino Co.	300	6,282	7,455	L
San Luis Obispo	San Luis Obispo	120	2,967	4,479	L
Santa Maria	Santa Barbara Co.	150	3,124	1,679	W
Soledad	Soledad	26	193	248	L
Wasco	Wasco	100	637	1,096	L
Westley	Stanislaus Co.	20	82	26	W
Williams	Williams	20	120	307	L
1963					
Blythe	Riverside Co.	100	188	292	L
Calexico	Calexico	50	240	169	W
Del Rey	Fresno County	40	69	7	W
Mendota	Fresno County	50	279	77	W
Reedley	Fresno County	20	263	243	W

Location	Housing Authority	No. of Units	VOTE		W-Won L-Lost
			For	Against	
1964					
Marin County	Marin County	200	47,774	18,256	W
Martinez	Contra Costa Co.	50	1,881	756	W
Merced	Merced County	160	544	1,039	L
Oakley	Contra Costa Co.	40	612	227	W
San Francisco	San Francisco	2,500	140,906	115,483	W
South Dos Palos	Merced County	24	83	4	W
West Pittsburg	Contra Costa Co.	50	2,093	533	W
1965					
Barstow	San Bernardino Co.	250	1,342	998	W
Blythe	Riverside Co.	100	60	97	L
Firebaugh	Fresno County	30	102	19	W
Laton	Fresno County	20	115	90	W
San Pablo	San Pablo	150	419	569	L
Stockton	San Joaquin Co.	220	12,465	16,908	L
1966					
Biola	Fresno County	24	44	38	W
Crescent City	Crescent City	200	127	218	L
Eureka	Eureka	100	3,300	4,688	L
Huron	Fresno County	40	62	21	W
McFarland	Kern County	60	436	282	W
Oakland	Oakland	2,500	60,692	55,686	W
Pacifica	San Mateo Co.	200	1,834	2,993	L
Pacifica	San Mateo Co.	200	3,609	4,213	L
Port Hueneme	Port Hueneme	60	887	389	W
Quincy	Plumas County	50	274	683	L
San Joaquin	Fresno County	30	54	25	W
Tracy	San Joaquin Co.	40	2,490	1,838	W
1967					
New London	Tulare County	10	44	14	W
Pinedale	Fresno County	85	96	84	W
Riverbank	Riverbank	30	224	61	W
Traver	Tulare County	10	37	5	W
1968					
Malaga	Fresno County	50	27	36	L
San Luis Obispo	San Luis Obispo	120	5,728	2,962	W

Source: California Department of Housing and Development, August 8, 1968.

Appendix B

PUBLIC HOUSING UNITS PER 1,000 LOW-INCOME POPULATION

A	B	C	D	E	F
State	Low-1 Income Population (in 1,000s)	Per Cent of U.S. Low-Inc. Population	Total Units (including pre-con- struction):	Total Units per 1,000 Low-Income Population	Per Cent of U.S. Units
U.S.	18,935	100	814,965	43.1	100
Cal.	1,530	8	35,804	23.4	4
Ill.	847	4	61,851	73.1	8
Mass.	456	2	23,547	62.6	4
Mich.	633	3	18,184	28.7	2
New Y.	1,500	8	100,026	66.7	12
Ohio	815	4	35,200	43.2	4
Pa.	1,019	5	61,195	60.1	7
Tex.	1,180	6	43,099	36.5	5

¹United States Census, Characteristics of Population: 1960.

²HUD: Summaries of Low-rent Housing Programs, including units in pre-construction (except where otherwise noted), 12-31-67.

[Title of Court and Cause]

ANSWER

Defendants the Housing Authority of the City of San Jose, Rodmar H. Pulley, Mary R. Boyce, Walter Rector, David Reiser, Allen Bellandi and Sam Obregon, for answer to the complaint on file herein, admit, deny and allege as follows:

1. Admit the allegations contained in paragraphs 1, 10, 11, 12, 13, 14, 15, 16, 19, 22, 23, 24, 27, and 35.

2. Deny the allegations contained in paragraphs 2, 3, 18, 25, 28, 29, 31, 32 and 34.

3. Defendants are without sufficient information or belief to admit or deny the allegations of paragraphs 4, 5, 6, 7, 8, 9 and 20, and basing their denial thereon, deny each and every allegation contained therein.

By way of further answer, defendants allege as follows:

For First Defense—Parties

4. Defendants Mary Boyce, Walter Rector, David Reiser, Allen Bellandi, Sam Obregon and Rodmar H. Pulley are incorrectly sued herein as individuals and not solely in their official capacity as board members and executive director. Defendant Rodmar H. Pulley is no longer executive director and has not been since October 15, 1969.

Second Defense—Valid Reservation of Power

5. These defendants are bound by the provisions of Article XXXIV of the California Constitution in that there is no obligation or requirement that the People of the State of California participate in Federally assisted housing owned by Housing Authorities, and the people of the State of California have, by a

valid exercise of their sovereignty, limited and reserved their grant of power and authority to defendants to participate in Federally assisted housing to those situations in which the local electorate has, by majority vote in a referendum, approved such participation where a Housing Authority acquires and owns real property.

Third Defense—Relief Sought

6. The relief sought by plaintiffs is beyond the jurisdiction of the court in that it seeks not only a declaration of the invalidity of California Constitution § XXXIV but also seeks to direct the defendant Board of Directors of the Housing Authority of the City of San Jose to exercise its discretion in a particular way, that is, to compel it to proceed to acquire housing without first deliberating, holding such hearings as it deems appropriate, and without providing that Board with the opportunity to exercise that discretion which it is obliged to exercise.

Wherefore, defendants and each of them pray for judgment as follows:

1. That plaintiffs take nothing by their complaint;
2. for costs of suit; and,
3. for such other and further relief as the Court deems just.

Dated: October 23, 1969.

/s/ Robert S. Sturges

Attorney for Defendants the Housing
Authority of the City of San Jose and
its Board of Directors

(Proof of Service omitted)

[Title of Court and Cause]

REQUEST FOR ADMISSIONS

Plaintiffs and each of them request defendants and each of them within ten days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissability which may be interposed at the trial:

I. That each of the following documents, attached to the complaint in the above entitled matter, is genuine:

1. Exhibit F, a copy of resolution number 28714.
2. Exhibit G, a copy of resolution number 34642.
3. Appendix B, statistics from the United States census, characteristics of population of 1960 and from HUD: summaries of low-rent housing programs including units in pre-construction (except where otherwise noted) 12-21-67 and other information contained in that appendix.

II. That the following document, attached to this Request for Admissions, is genuine:

1. A copy of resolution number 28614.

III. The following statements are true:

1. The named plaintiffs are all citizens of the United States of America.
2. The named plaintiffs are all residents of the city of San Jose.
3. The named plaintiffs are all of low income.
4. The named plaintiffs all reside in unsafe, unsanitary or crowded housing.
5. The named plaintiffs are all on the waiting list of the Housing Authority of the City of San Jose.
6. The named plaintiffs have all been on the waiting list of the Housing Authority of the City of San Jose for more than one year.
7. Plaintiff Anita Valtierra and her seven minor children live in a one-bedroom apartment.
8. Plaintiff Valtierra and her seven minor children live in an apartment owned by the City of San Jose.
9. The Valtierra family was on the emergency list of the Housing Authority of the City of San Jose approximately one year ago.
10. Emergency cases are defined by the Housing Authority of the City of San Jose as only those cases where the family is totally without housing.
11. Plaintiff Dorether Anderson and her eight children live in a three bedroom, one bathroom, home.

12. Plaintiff Dorether Anderson has been on the waiting list of the Housing Authority of the City of San Jose continuously since November, 1966.
13. The Housing Authority of the City of San Jose is a public entity.
14. The Housing Authority of the City of San Jose was established pursuant to California Health and Safety Code section 34200 *et seq.*
15. Defendants Boyce Rector, Reiser, Bellandi and Obregon are duly appointed commissioners of the Housing Authority of the City of San Jose.
16. The Housing Authority of the City of San Jose will not make application to HUD for a preliminary loan unless and until the proposal is approved by the electorate in accordance with Article 34 of the California Constitution.
17. The City Council of the City of San Jose is the governing body of the City of San Jose.
18. Defendants James, Mineta, Shaffer, Colla, Hays, Goglio, and Gross are the duly elected councilmen of the City Council of the City of San Jose.
19. The City Council of the City of San Jose will not approve any application for a preliminary loan unless a successful referendum approving the construction of low income housing has been accomplished pursuant to Article 34 of the California Constitution.

20. The City Council of the City of San Jose will not approve any contracts for the construction of public housing in San Jose unless and until the proposal is approved by the electorate in accordance with Article 34 of the California Constitution.
21. Defendant George Romney, acting in his official capacity, will refuse to approve the use of federal funds to aid the construction of new public housing units in San Jose unless and until the proposal is approved by the electorate in accordance with Article 34 of the California Constitution.
22. At the time that the Housing Authority of the City of San Jose was activated, it was found by resolution of the City Council that there was a need for a Housing Authority to function within the City of San Jose.
23. There is an acute housing shortage in the City of San Jose.
24. This housing shortage is especially burdensome for the poor since the cost of rental units has increased dramatically in the past few years.
25. Much of the older housing in the City of San Jose is deteriorating and can no longer be used.
26. The only way that the housing shortage can be alleviated is to construct new units.

27. The cost of construction of new units is so high that low-income families cannot afford to participate in new construction without financial assistance.
28. The Housing Authority's waiting list has been increasing each month.
29. There are presently more than 729 eligible families on the waiting list.
30. The reason the 1,000 units requested in the November, 1968 election were to be scattered throughout the City was to avoid racial and economic segregation.

/s/ Diane V. Delevett
 Attorney for Plaintiffs
 22 Martin Street
 Gilroy, California 95020

RESOLUTION No. 28614

**Resolution of the Council of the City of San Jose
Declaring the Need for a Housing Authority in
the City of San Jose, California.**

Be It Resolved by the Council of the City of San Jose:

SECTION 1. The Council of the City of San Jose, California, hereby determines, finds and declares, in pursuance of the Housing Authorities Law as amended, that:

(a) Insanitary and unsafe inhabited dwelling accommodations exist in the City of San Jose, California;

(b) There is a shortage of safe and sanitary dwelling accommodations in the City of San Jose, California, available to persons of low income at rentals they can afford;

(c) There is need for a housing authority to function in the City of San Jose, California.

SECTION 2. The City Clerk shall promptly notify the Mayor of the City of San Jose, California, of the adoption of this resolution.

SECTION 3. This resolution is adopted pursuant to the provisions of Section 34242 of the Health and Safety Code of the State of California, and shall be effective immediately.

Adopted this 17 day of January, 1966 by the following vote:

James, Miller, Solari, and Pace.

/s/ J. L. Pace

Mayor

J. L. Pace, M.D.

Void if detached

The attached is a full, true and correct copy of the original now on file in my office.

Attest:

Francis L. Greiner, City Clerk of the City of San Jose, Calif.

By: /s/ Margaret Marumoto, Deputy

Dated: Aug. 19, 1969

Article XXXIV
Proposed
AMENDMENTS TO
CONSTITUTION
PROPOSITIONS AND
PROPOSED LAWS
TOGETHER WITH ARGUMENTS

To Be Submitted to the Electors
of the State of California at the

GENERAL ELECTION
TUESDAY, NOV. 7, 1950

Compiled by RALPH N. KLEPS, Legislative Counsel
Distributed by FRANK M. JORDAN, Secretary of State

CERTIFICATE OF SECRETARY OF STATE

State of California, Department of State
Sacramento, California

I, Frank M. Jordan, Secretary of State of the State of California, do hereby certify that the following measures will be submitted to the electors of the State of California at the general election to be held throughout the State on the seventh day of November, 1950.

Witness my hand and the great seal of the State,
at office in Sacramento, California, the first day of
September, A.D. 1950.

(Seal)

Frank M. Jordan

Secretary of State

Public Housing Projects. Requiring Election to Establish.

	Initiative Constitutional Amendment. Adds Article XXXIV to Constitution. Requires approval of majority of electors of county or city, voting at an election, as prerequisite for establishment of any low-rent housing project by the State or any county, city, district, authority, or other state public body. Defines low-rent housing project as living accommodations for persons of low income financed or assisted by Federal Government or state public body. Exempts any project subject to existing contract between state public body and Federal Government.	YES
10		NO

(For full text of measure, see page 9, Part II)

Analysis by the Legislative Counsel

This constitutional amendment prohibits the development, construction, or acquisition of any low-rent housing project by the State, or any city, city and county, county, district, authority, agency or other subdivision or public body of the State until ap-

proved by a majority vote of the electors of the city, town, or county in which the project is to be located.

“Low-rent housing project” is defined as any development composed of urban or rural dwellings, apartments, or other living accommodations for persons of low income, financed in whole or in part by the United States or any of its agencies or instrumentalities, or by the State or any of its agencies or public bodies, or to which the Federal Government or the state public body extends assistance by supplying labor, guaranteeing the payment of liens, or otherwise, except where a contract for financial assistance between any state public body and the Federal Government in respect to such project is in existence on the effective date of the amendment.

“Persons of low income” means persons or families who lack the income necessary (as determined by the state public body developing, constructing, or acquiring the project) to enable them without financial assistance to live in decent, safe, and sanitary dwellings, without overcrowding.

The amendment would be self-executing, but legislation to facilitate its operation may be enacted.

*Argument in Favor of Initiative
Proposition No. 10*

A “yes” vote for this proposed constitutional amendment is a vote neither for nor against public housing. It is a vote for the future right to say “yes” or “no” when the community considers a public housing project.

Passage of the "Public Housing Projects Law" will restore to the citizens of a city, town, or county, as the case may be, the right to decide whether public housing is needed or wanted in each particular locality. Such is not the case at present.

Time after time within the past year, California communities have had public housing projects forced upon them without regard either to the wishes of the citizens or community needs. This is a particularly critical matter in view of the fact that the long-term, multimillion-dollar public housing contracts call for tax waivers and other forms of local assistance, which the Federal Government says will amount to half the cost of the federal subsidy on the project as long as it exists.

For government to force such additional hidden expense on the voters at a time when taxation and the cost of living have reached an extreme high is a "gift" of debatable value. It should be accepted or rejected by ballot.

If, on the other hand, certain communities are in such dire need of housing that the cost of long-term subsidization is deemed worth while, local voters, who best know that need, should have the right to express their wishes by ballot.

In either case, a "yes" vote for this proposed amendment will strengthen local self-government and restore to the community the right to determine its own future course.

Furthermore, the financing of public housing projects is an adaptation of the principle of the issuance

of revenue bonds. Under California law, revenue bonds, which bind a community to many years of debt, cannot be issued without local approval given by ballot. Public housing and its long years of hidden debt should also be submitted to the voters to give them the right to decide whether the need for public housing is worth the cost.

A "yes" vote for the "Public Housing Projects Law" is a vote for strong local self-government. It is an expression of confidence in the community's future and in the democratic process of government. To strengthen the grass roots democracy which has made America protector of the world's free peoples, vote "yes" on the Public Housing Projects Law.

Earl Desmond

State Senator Sacramento County

Frederick C. Dockweiler

*Argument Against Initiative
Proposition No. 10*

This proposition should be defeated because: (1) it is wholly unnecessary; (2) it is contrary to firmly establish principles of American representative government; (3) if adopted, it would be impossible to act expeditiously in times of emergency; (4) it would substantially increase the tax load in cities and counties of the State.

There is no necessity for a constitutional amendment such as here proposed, prohibiting the development, construction and acquisition of low-rent housing projects without submission of the issue to the

vote of the people in general or special elections to be held for the particular purpose in each city, town, or county of the State. This would be time-consuming and expensive. (A single special election in the City of Los Angeles would cost \$400,000.) The total cost to taxpayers of the State for holding special elections would be staggering.

California now has an adequate statute relating to the subject—"The California Housing Authorities Law, Act 3483"—which provides that no low-rent housing project can be undertaken "until the governing body of the city or county * * * approves said project by resolution duly adopted." This law was passed in 1938 and has been amended several times.

If the proponents of this measure desire to change the legal procedure for local approval of low-rent housing projects, they should make their recommendations to the Legislature and ask for amendment of the law rather than freeze into the State Constitution (already too voluminous) provisions relating to local governmental administrative procedure.

The people already have adequate control through election of their representatives in the State Legislature, city councils, and boards of supervisors, and through the exercise of the initiative, referendum and recall.

This proposed measure is an attempt to discourage the construction of new low-rent housing projects (in which veterans have preference) by setting up a slow, cumbersome and costly procedure to make use of federal funds that would in any event be expended

in other states without in any way benefiting taxpayers of California.

In a national emergency it may become necessary to quickly provide housing for industrial workers in certain areas. In the event of an atomic bomb attack emergency housing would have to be provided immediately for local residents. Elected representatives of the people in the State Legislature, in city councils and boards of supervisors should be free to act promptly to meet pressing needs in any contingency, rather than be placed in a legal straitjacket.

This proposed constitutional amendment is not in the public interest. Vote no on Proposition No. 10.

Chris N. Jespersen

State Senator, Twenty-ninth District

C. J. Haggerty, Secretary

California State Federation of Labor
(A.F. of L.)

Fletcher Bowron,

Mayor of the City of Los Angeles

[Title of Court and Cause]

**ADMISSIONS OF DEFENDANT HOUSING
AUTHORITY OF THE CITY OF SAN JOSE**

Defendant Housing Authority of the City of San Jose and the individual members of the Board of said Housing Authority hereby respond to the Request for Admissions heretofore filed by plaintiffs as follows:

In response to Request to Admission No. I, these defendants admit each and every request for admission set forth herein.

These defendants admit that the document designated in Request No. II is genuine.

These defendants admit that all of the statements listed in Request are true with the exception of Statements Number 10, 19, 26, 29 and 30.

In answer to Request No. 10, it is true that emergency cases are defined by the Housing Authority of the City of San Jose as those cases where the family is totally without housing, but also the definition includes those cases where the applicant is about to be without housing by the reason of having received a vacate, foreclosure, or eviction notice, or where he is paying more than fifty per cent of his net income for rent.

In answer to question 19, it is not known by these defendants whether it is appropriate or required that City Council of the City of San Jose approve any application for a *preliminary loan* unless a successful referendum has first been held.

In answer to question 26, it is true that one reasonable and practical way to alleviate the existing housing shortage is the construction of new units, but these defendants would not admit that this is the only way to alleviate that shortage.

In answer to question #29, there are presently 779 families on the waiting list of the Housing Authority of the City of San Jose.

In answer to question 30, it is admitted that one of the reasons and bases for the November, 1968 election requesting authorization for 1000 units which were to be scattered throughout the city was to avoid racial and economic segregation, that consideration being one of several bases.

Dated: November 18, 1969

Robert S. Sturges

[Title of Court and Cause]

RESPONSE TO REQUEST FOR ADMISSIONS

Come now the defendants Ronald James, Norman Y. Mineta, Joseph Colla, Walter V. Hays, David J. Goglio and Kurt Gross, and each of them, and for their Response to the Request for Admissions on file herein, admit or deny as follows:

(1) Admit the genuineness of the documents attached to the Complaint as Exhibits F and G as set forth in Request Numbers I 1 and I 2 and attached to the Request as Resolution Number 28614 as referred to in Request II 1.

(2) Cannot truthfully admit or deny the genuineness of the document set forth in Request Number I 3 for the reason that neither any of the defendants nor any of their employees, agents or attorneys have any knowledge of said matters.

(3) Cannot truthfully admit or deny the matters set forth in Request Numbers III 1 through III 6, inclusive, III 9 through III 12, inclusive, III 21, and III 23 through 29, inclusive, for the reason that neither any of the defendants nor any of their employees, agents or attorneys have any knowledge of said matters.

(4) Admit the truth of the matters set forth in Request Numbers III 7 and III 8, III 13 through III 20, inclusive, III 22 and III 30.

Dated: November 12, 1969.

(Perjury Affidavits omitted)

[Title of Court and Cause]

RESPONSE TO REQUEST FOR ADMISSIONS

Come now the defendant, Virginia C. Shaffer, and for her Response to the Request For Admissions on file herein, admits or denies as follows:

(1) Admits the genuineness of the documents attached to the Complaint as Exhibits F and G as set forth in Request Numbers I 1 and I 2 and attached to the Request as Resolution Number 28614 as referred to in Request II 1.

(2) Cannot truthfully admit or deny the genuineness of the document set forth in Request Number I 3 for the reason that neither any of the defendants nor any of their employees, agents or attorneys have any knowledge of said matters.

(3) Cannot truthfully admit or deny the matters set forth in Request Numbers III 1 through III 12, inclusive, III 21, and III 23 through 30, inclusive, for the reason that neither any of the defendants nor any of their employees, agents or attorneys have any knowledge of said matters.

(4) Admits the truth of the matters set forth in Request Numbers III 13 through III 20, inclusive, and III 22.

Dated: November 18, 1969.

(Perjury Affidavit omitted)

[Title of Court and Cause]

**AFFIDAVIT OF
FRANKLIN MILES LOCKFELD**

State of California

County of Santa Clara—ss.

Franklin Miles Lockfeld, being first duly sworn, deposes and says:

I am a Senior Planner in the County Planning Department for Santa Clara County. Since April of 1969, I have been working on the United States Department of Housing and Urban Development, California Project P-348 pursuant to §701 of the Housing Act of 1954 as amended. As a result of my research for this project, I know the following facts to be true in Santa Clara County.

The housing market in Santa Clara County has acted unfavorably for low and moderate income families in both home ownership and rental opportunity. There is a shortage of homes valued at less than \$24,000.00. This is caused in part by families with higher incomes living in houses valued at less than twice their annual income (which is the normal ratio of cost of house to income). It is also caused by the fact that single family housing stock has appreciated approximately 28% since 1960. Houses in some areas have appreciated nearly 50%. In 1969 the \$20,000.00 or less price bracket for new housing almost does not exist. In addition, only 13% of the 59,000 single-unit houses built since 1960 are now valued at less than \$20,000.00. The housing that is least sound is found in the \$15,000.00 or less bracket. This is also the tightest market since families with income of \$7,500 or less are able to afford only this kind of housing.

The average sales price of FHA new insured housing in the last one-quarter of 1968 was \$25,400.00. The average monthly expense for the purchase of such a home is \$245.00. A required income of approximately \$14,000.00 is necessary. For used housing a yearly income of approximately \$13,000.00 is necessary. The problem for low-income groups is also heightened by the fact that they cannot generally receive FHA assistance for new housing. In 1965, over 20% of the FHA insurance mortgages were made to families with income of less than \$8,000.00. In 1967 this same 20% went to families with income of less than \$10,000.00. In the 1966 census, 65% of the population of the County had less than \$10,000.00 annual income; 45% had less than \$8,000.00 annual income.

As to rentals, 25% of monthly income is generally regarded as the maximum people should need to pay for rent. There are now approximately 20,000 rental households with incomes of less than \$5,700.00 who are living in units costing more than 25% of their income. Rents have also drastically increased between 1964 and 1969: one bedroom apartments went from \$96.00 to \$146.00; studio apartments went from \$72.00 to \$127.00; two bedroom apartments went from \$117.00 to \$165.00 and three bedroom or more went from \$146.00 to \$186.00. Over 60% of the apartment house managers interviewed in a vacancy study conducted jointly with San Jose School of Business in March, 1969, had raised rents in the last 6 months. In addition, unsound apartment units are more often found in the \$120.00 per month or less bracket (nearly one-quarter unsound) where the demand is greatest

for families with income of less than \$5,800.00 per year.

Neither the County Housing Authority nor the City Housing Authority has succeeded in finding enough units to reach the authorized limits set by Housing and Urban Development. A total of 1933 units are now leased, 1071 additional families are eligible for housing, and 782 are pending eligibility clearance.

In order to have normal mobility in the society for people wishing to rent and purchase you need vacancy rates of 5% for single family units and 7-8% for apartments. To get these rates Santa Clara County needs an additional 5,000 multi-family rental units, 2,100 single family units for rent, and 6,800 single family units for purchase.

In 1966 over 40,000 households had income below \$4,000.00 (15% of the County population). Based on the 1966 census figures for income and the 1969 entrance levels of income for the San Jose Housing Authority, an estimated 19,500 households would be eligible for housing provided by the Authority in the City of San Jose alone. In other parts of the County an additional 20,000 were under entry level income limits for the County Housing Authority in 1966. Because of the housing situation, economic segregation has occurred. Low income families have gone to the valley floor, higher income families to the foothills. The low-income areas are closely related to the areas of concentration of minority residents and high income areas are closely related to the nearly all white sections of the community. Racial and ethnic groups constitute approximately 14% of the county popula-

tion. In 1966 one-third of the population lived in areas of less than 5% minority residents and 60,000 families lived where minorities constituted over one-third of the population. The economic and racial segregation has also left the minority groups and the poor groups in the most delapidated housing. In 1960 only 5% of the units occupied by white-non-Mexican-Americans were in a delapidated or deteriorated condition, while 23% of the units occupied by Mexican-Americans and 20% of the units occupied by non-whites were in delapidated or deteriorated condition. Minorities were thus over represented in the less than standard housing by greater than four to one and occupied nearly one-third of the deteriorating and dilapidated housing in the County in 1960.

Housing units occupied by minorities also tended to be far less adequate to their needs than units occupied by white households. A standard measure of housing occupancy is the person per room ratio; densities greater than 1.0 representing conditions of overcrowding. The 1960 census indicated that while less than 6% of the white households were thus overcrowded, nearly 30% of Mexican-American households, and over 17% of non-white households, had persons per room ratios of 1.01 or more.

/s/ Franklin Miles Lockfeld

Subscribed and sworn to before me this 19th day of November, 1969.

(Seal)

/s/ Marilyn B. Ott,
Notary Public in and for the
County of Santa Clara, Calif.
My commission expires March 3, 1973.

[Title of Court and Cause]

ANSWER AND REQUEST FOR JURY TRIAL

Defendants Ronald James, Virginia C. Shaffer, Joseph Colla, Walter V. Hays, sued incorrectly herein as Walter V. Hayes, David J. Goglio, sued incorrectly herein as David G. Goglio and Kurt Gross, sued incorrectly herein as Kirk Gross, for Answer to the Complaint on file herein, admit, deny and allege as follows:

I

Admit the allegations of the first two sentences contained in paragraph 1. Defendants are without sufficient information or belief to admit or deny the allegations of the last sentence of paragraph 1, and basing their denial thereon, deny each and every allegation contained therein.

II

Deny each and every, all and singular, allegation contained in paragraphs 2, 3, 17, 18, 25, 26, 28, 29, 31, 32, 34 and 35.

III

Defendants are without sufficient information or belief to admit or deny the allegations of paragraphs 4, 6, 7, 8, 9, 20 and 21, and basing their denial thereon, deny each and every allegation contained therein.

IV

Admit the allegations of the first sentence contained in paragraph 5. Defendants are without sufficient information or belief to admit or deny the

allegations of the remaining sentences of paragraph 1, and basing their denial thereon, deny each and every allegation contained therein.

V

Admit the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 19, 22, 23, 24 and 27.

VI

By way of Answer to the allegations contained in paragraphs 30 and 33, defendants refer to their Answers to paragraphs 1-25, inclusive, and to paragraphs 27 and 29, incorporating said Answers herein as if they were set out at length.

By way of further Answer, defendants allege as follows:

First Affirmative Defense

VII

Defendants are incorrectly sued herein as individuals and not solely in their representative capacity as Council Members and as Mayor of the City of San Jose.

Second Affirmative Defense

VIII

Article XXXIV of the California Constitution is constitutional under the Federal Constitution and Federal law in that it is a valid exercise of the State sovereignty by the People of the State of California for such People to limit and reserve their grant of power and authority to defendants to develop, con-

struct or acquire a low-rent housing project without the prior approval of a majority of the local electorate.

Third Affirmative Defense

IX

Article XXXIV of the California Constitution is constitutional under the Federal Constitution and Federal law in that said article deprives no one of any existing Federal right, immunity or privilege.

Fourth Affirmative Defense

X

Article XXXIV of the California Constitution is constitutional under the Federal Constitution and Federal law in that no local governmental entity or State agency is under any Federal duty either (1) to provide a low-rent housing project in its community, or (2) in the event such local government or State agency wishes to provide such a project, to do so without first seeking the approval of a majority of the local electorate.

Fifth Affirmative Defense

XI

Even if the singling out of "low-rent" housing projects for persons of low income" by Article XXXIV is an invidious classification and a deprivation of equal protection under the XIV Amendment of the Federal Constitution to persons in such classification, nevertheless, the intent of the People of California to preserve such majority vote approval

prior to the development, construction or acquisition of *any* housing project by any local government or State agency is demonstrated by the inclusion of a severability clause in said Article. Hence, in any event defendants are still obligated under the provisions of said Article XXXIV to first seek the approval of a majority of the local electorate prior to the development, construction or acquisition of a housing project.

Sixth Affirmative Defense

XII

The relief sought by plaintiffs is beyond the jurisdiction of the court in that the Complaint seeks to obtain a court order directing and compelling defendants to exercise their legislative power and discretion in a certain way.

Wherefore, defendants, and each of them, pray for judgment as follows:

1. That plaintiffs take nothing by their Complaint;
2. Costs of suit; and
3. Such other relief as the Court deems proper.

Dated: November 12, 1969.

FERDINAND P. PALLA,

City Attorney,

By RICHARD W. MARSTON,

Deputy City Attorney,

Attorneys for Defendants.

(Proof of Service omitted)

[Title of Court and Cause]

**AFFIDAVIT OF BENJAMIN E. WELLS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT.**

State of California

County of Santa Clara—ss.

Benjamin E. Wells, being first duly sworn, deposes and says: I am head of the Research and Capital Improvements Programming Division of the San Jose City Planning Department. In that capacity, I was given charge of the preparation of the Neighborhood Analyses Element of the San Jose Workable Program for Community Improvement submitted to the Department of Housing and Urban Development in November, 1968.

In making that study, we relied in part on data gathered in 1967 by the Housing Division of the San Jose City Health Department for our information on housing conditions in the City of San Jose. We found from that data that 16 of 46 neighborhoods had three or more blocks with substandard housing rates over 20%. Since this rate was considered a critical level, we selected these 16 neighborhoods for detailed analysis. The analysis included study of the social and economic characteristics of people affected by blight in those neighborhoods. The analysis attempted to point out the causes of blight by correlating the frequency of each of the social and economic characteristics indicating social breakdown with the level of substandard housing. The objective was to determine which characteristics caused blight more than others.

It was statistically shown that low income was most highly correlated with substandard housing. We used multiple regression techniques in making this analysis.

A true and correct copy of the study entitled *Neighborhood Analyses, November, 1968*, is attached to this affidavit.

/s/ Benjamin E. Wells

Subscribed and Sworn To Before Me This 25th Day of November, 1969.

(Seal)

/s/ Alice B. Pedigo,
Notary Public in and for the
County of Santa Clara, Calif.

My commission expires Aug. 7, 1971.

[Title of Court and Cause]

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiffs respectfully move for a summary judgment for the relief demanded in the complaint on the grounds that there is no genuine issue as to any material fact and that plaintiffs are entitled to a judgment as a matter of law.

This motion is based upon the pleadings, the affidavits attached to the complaint, the affidavit of counsel for the plaintiffs pursuant to Local Rule 118 of the United States District Court for the Northern

District of California, the memorandum of points and authorities attached to the complaint and the memorandum of points and authorities annexed to this motion.

Dated: November 22, 1969

/s/ Diane V. Delevett
Attorney for Plaintiffs

[Title of Court and Cause]

STIPULATION OF FACT

It Is Hereby Stipulated by and between the attorneys for the plaintiffs and the municipal defendants herein that the following facts are true and are not controverted herein.

No type of housing is owned or leased by any state public body of the State of California (i.e., by any non-federal public entity in California) for residential purposes other than housing for rental to persons of low income, as such persons are defined by Article 34 of the California Constitution, except the following:

(1) Housing owned or leased by the Regents of the University of California, or by the State Colleges of California, for rental to students, faculty and certain administrative officers. Such housing, although mostly rent subsidized, is not available for occupancy by the public at large, and it is made available without regard to the income or the estate of the prospective occupant;

(2) Housing owned by various, non-federal public entities acquired incidentally by negotiation or eminent domain proceedings for non-housing, public works purposes (such as street widenings, highway construction, parks, school construction, sewer and drain line construction, and other public works projects) which housing is often rented by said entities on a month-to-month, temporary basis either to the former owners, to tenants of the former owners, to local housing agencies for subletting to persons of low income or directly by such entities to persons of low income until such time as the destruction or other removal of such housing is necessary to complete said public works projects; and

(c) Housing for employees of State institutions such as State hospitals and prisons, for employees of State parks or historical monuments, and the Governor's mansion.

Dated: Nov 26 1969

Ferdinand P. Palla, City Attorney
By /s/ Richard W. Marston
Attorneys for municipal defendants
/s/ Diane V. Delevett
Attorney for plaintiffs

(Proof of Service omitted)

Robert F. Peckham
52076

CIVIL DOCKET

United States District Court
3 Judge Court
(Judges Hamlin, Peckham & Levin)

Jury demand date: Nov. 24, 1969

Defendants

Attorneys

For plaintiff:

Don B. Kates, Jr.
Brian Paddock
Diane V. Delevett
Peter D. Coppelman
22 Martin Street
Gilroy, CA

Legal Aid Society of Santa Clara County
1656 East Santa Clara
San Jose, CA

National Housing Law Project
Earl Warren Legal Center
Berkeley, CA

For defendant:

City Atty, 412 City Hall
San Jose, Calif.

Robert S. Sturges, 777 N. 1st St.,
San Jose
U. S. Atty for Fedl. Defts.

Anita Valtierra, et al.,

vs.

Housing Authority City of San Jose, et al.

STATISTICAL RECORD

J.S. 5 mailed 8-27-69

(Date - 8-28-69) (Name or Receipt No. - 69982) (Rec. - 15.00)

(Date - Aug 29 1969) (Name or Receipt No. - C-D1-17)

(Disb. - 15.00)

(Date - 4-10-70) (Name or Receipt No. - 74724 (Appeal)

(Rec. - 5.00)

J.S. 6 mailed

(Date - Apr 14 1970) (Name or Receipt No. E-D1-81)

(Disb. 5.00)

Basis of Action: Declaratory Injunctive Relief,
Article 34, California Constitution (Housing)

1969:

Aug. 27—

1. Filed complaint and issued summons (three judge court requested).

Aug. 29—

Filed to L & M re appli. for a 3 judge court (CSL).

Aug. 27—

2. Filed Order pursuant to Rule 4(c).
3. Filed Order to Show Cause ret. 11/14/69. (Peckham)
4. Filed Memo of Pts. & Auths, in Support of Complaint.
5. Filed App. for Convening of a 3 Judge Dist. Court.
6. Filed Notification & Certificate re Three (3) Judge Action. (Peckham)

Sept. 2—

7. Filed order convening 3 Judge Court, Consisting of Judges, Oliver D. Hamlin, Robert F. Peckham & Gerald S. Levin (Chambers, C.J.)

Sept. 23—

8. Filed defts notice of mo to dismiss & to deny application to convene 3 judge court, 11-14-69, 10AM, Judge Peckham, San Jose.

Oct. 7—

Issued ALIAS SUMMONS. Orig Misplaced.

Oct. 7—

9. Filed affidavit for issuance of alias summons.

Oct. 14—

10. Filed alias summons on ret, exec. 5 Sept. 69.

Oct. 22—

Issued alias summons.

Oct. 22—

11. Filed pltfs notice of mo & mo for enlargement of time to serve OSC, 10-30-69, 9:30AM, San Jose.

Oct. 24—

12. Filed summon on ret, exec. 10-23-69.

Oct. 27—

13. Filed ANS of deflt Housing Authy of City of San Jose.

Oct. 28—

14. Filed pltfs affidavit of sve of summons, complaint, etc.
15. Filed pltfs affidavit of mailing mo. for enlargement of time etc.

16. Filed pltfs affidavit of sve of summons, complaint, etc.

Oct. 29—

17. Filed Fed. defts memo re pltfs mo for enlargement of time.

Oct. 31—

ORD aft hrg, pltfs mo to enlarge time for sve granted. (Peckham)

18. Filed pltfs request for admissions.
19. Filed ORD for enlargement of time re pltfs time to serve OSC to 10-29-69. (Peckham)

Nov. 3—

20. Filed ret on sve of writ, exec 10-23-69 as to US. Atty.

Nov. 4—

21. Filed Clerks notice of hrg motions contd to 11-20-69, 10AM, San Jose.

Nov. 12—

22. Filed Clerks notice of THREE JUDGE HRG motions contd to 11-20-69, 10 AM, San Jose.
23. Filed defts notice of mo to dismiss, 11-20-69, 10AM, San Jose.

Nov. 17—

- 24-A Deft Suppl Mem. support of mo to Dismiss.
24. Filed defts USA notice of mo & mo, ret to OSC & to dismiss, 11-20-69, 10AM.

Nov. 20—

25. Filed defts Virginia C. Shaffer RESPONSE to request for admissions.

26. Filed defts Ronald James, Norman Y. Mineta, Joseph Colla, Walter V. Hays, David J. Goglio & Kurt Gross to request for admissions.
27. Filed pltfs memo of pts & auths in ans to mo to dismiss etc.
28. Filed pltfs affidavit of Franklin Miles Lockfeld.
29. Filed copy of "Draft" "The Housing Situation: 1969".

Nov. 24—

30. Filed fedl. defts suppl. memo.
31. Filed defts ANS & request for JURY TRIAL.

Nov. 25—

32. Filed pltfs mo for sum, judgmt.

Nov. 20—

Ord. aft. 3 Judge hearing mo. of deft City of San Jose to dismiss, mo. of Deft. San Jose Housing Auth. to dismiss, Fed. defts mo. to dismiss. & pltff's. appl. for perm. injunc. in action 52076 (in action C69-1 hrg was for return on O.S.C. re prelim. injunc.), defts' counsel to file fur. affidavits by Dec. 1, 1969; pltffs' counsel to file counter-affidavits by Dec. 8, 1969; upon receipt of said affidavits the various mos. will be deemed submitted to the 3 judge court. (Hamlin, CJ, Peckham & Levin, DJ's)

Nov. 28—

33. Filed STIP of fact.

Dec. 8—

34. Filed Fed. Defts memo re pltfs mo for sum. judgt.

Dec. 10—

35. Filed pltfs affidavit of mailing pltfs mo for sum, judgt, etc.

1970:

Mar. 23—

36. Filed MEMO OF DECISION & ORD; Ord that federal defts mo for dismissal granted; pltfs mo for sum. judgmt declaring Article XXXIV of the CA State Constitution to be unconstitutional & their application for inj. granted. (Hamlin, Peckham & Levin)

Apr. 1—

37. Filed defts mo to amend decision dtd 3-23-70 & ORD shortening time for hrg on mo to 4-2-70, 2PM. (Peckham)

Apr. 2—

THREE JUDGE COURT HRG, defts mo for stay of inj submitted & denied.

(Hamlin, Levin & Peckham)

38. Filed ORD granting pltfs mo for sum judgmt, declaratory judgmt & Perm. inj.
(Hamlin, Peckham & Levin)

Apr. 10—

39. Filed joint notice of Appeal in Civil 52076 & C-69-1-RFP by Defendants for the Supreme Court of the United States.
40. Filed Designation of Record on Appeal by Defendant's.

41. Filed Defendant's amended designation of contents of record on Appeal.

Apr. 13—

42. Filed Order to expedite appeal to the U.S. Supreme Court it is Ordered that the Clerk of the Court prepare & send the record of these two consolidated cases up to the Supreme Court within five (5) days. (Peckham)

Apr. 20—

Made, Mailed Record on Appeal Supreme Court of the U.S.

43. Filed ORD of DISMISSAL w/prejudice as to Federal debts. (Hamlin, Peckham, Levin) (Cys mailed)

May 6—

44. Filed Stipulation of Counsels that the Xerox copies certified by the Clerk of the District Court for the Northern District of California as the Record on Appeal are true copies of the originals.

May 7—

Re Made, Mailed Record on Appeal Supreme Court of the U.S.

June 1—

45. Filed certificate of clerk to record on appeal.

Original Filed Oct 1 1969,
Clerk, U. S. Dist. Court
San Francisco

United States District Court
for the Northern District of California

Civil Action No. C-69-1

Gussie Hayes, Diane Hayes, Carolyn Hayes, Cathy Hayes, Tommy Hayes, Barbara Hayes, Danny Hayes (by their general guardian, Gussie Hayes), Iota Weatherwax, Carroll Peil, Lawrence Peil, Mary Peil, Donna Peil, Robert Weatherwax (by their general guardian, Iota Weatherwax), Jo-Ann Brown, Karen Jackson, Kevin Jackson, Kenneth Jackson (by their general guardian, Jo-Ann Brown), Shirley Mae Luke, Sylvester Jones (by his general guardian, Shirley Mae Luke), on their own behalf and on behalf of all persons similarly situated,

Plaintiffs,

vs.

The Housing Authority of San Mateo County, a public entity; William G. Weman, individually and as Executive Director of the Housing Authority of San Mateo County; Benjamin Ichinose; Ben Albrecht; Perry A. Bygdnes; Raymond Rucker; and James A. Tassos, individually and as Commissioners of the Housing Authority of San Mateo County,

Defendants.

COMPLAINT FOR DECLARATORY AND IN-
JUNCTIVE RELIEF; THREE JUDGE COURT
REQUESTED

I. *Jurisdiction*

1. This action is brought to vindicate the plaintiffs' rights to safe, sanitary and decent housing under

the Housing Act of 1937 (42 U.S.C. §§ 1401, *et seq.*), and to be free of discrimination on account of race and poverty in securing housing opportunities under that Act. The action is authorized by the Act and by 42 U.S.C. § 1983, inasmuch as it seeks to redress the deprivation, under color of Article XXXIV of the Constitution of the State of California, of rights, privileges and immunities secured by the Constitution and laws of the United States, specifically: the Equal Protection and Privileges and Immunities Clauses of the Fourteenth Amendment, the Supremacy Clause (U.S. Const., Art. VI, cl. 2), the Housing Act of 1937, 42 U.S.C. § 1981, and 42 U.S.C. § 1982. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), (4); and also by 28 U.S.C. § 1331. The matter in controversy exceeds the value of \$10,000, because each plaintiff herein sues to remedy the denial of his or her right to safe, sanitary and decent housing which, in the case of each, has a value of more than that amount.

2. A declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-2202 that Article XXXIV of the *California Constitution is unconstitutional on its face and as applied*. Injunctive relief restraining the defendants from enforcing Article XXXIV upon that ground is also requested. Accordingly, a three-judge court is required by 28 U.S.C. §§ 2281, 2284.

II. Parties

3. Plaintiff Gussie Hayes is a black citizen of the United States and resides in San Mateo County. She

lives with five of her six minor children in a three-bedroom house that is infested by rodents and insects. She is forced to allow one of her children to live with her sister because of the crowded and unsanitary conditions in the house. The bathroom is not usable because of backup of sewage in the toilet and the bathtub. Her children go to her sister's house to use the bathroom. The whole house smells of sewage. The City of Menlo Park has ordered that the landlord correct numerous housing code violations, but the unhealthy and unsafe conditions still exist. The City's letter of July 8, 1969, and Notice of Abatement of Public Nuisance Requiring Repair, Rehabilitation and Maintenance of Property, marked Exhibit A and B, respectively, and attached hereto, are incorporated by reference into this Complaint.

4. Gussie Hayes and her children have been determined to be eligible for public housing, and have been placed on the waiting list. They have now been on the waiting list for public housing for about eight months. By reason of the operation of Article XXXIV of the California Constitution, no public housing is available for them or for anyone else on the list. Mrs. Hayes has been unable to find a sanitary and safe house at a price she can afford. She pays \$140.00 a month rent for the house described above. She would only pay about 75.00 a month for a clean and safe house if placed in public housing. Her family has suffered from unhealthy and dangerous conditions in the home, and from lack of funds for necessities because of the high rent. Gussie Hayes has suffered particularly from having to break up

her family. Plaintiff Hayes' Affidavit, marked Exhibit C and attached hereto, is incorporated by reference into this Complaint.

5. Plaintiffs Diane Hayes, Carolyn Hayes, Cathy Hayes, Tommy Hayes, Barbara Hayes, and Danny Hayes, are the minor children of Gussie Hayes. They sue herein by their general guardian Gussie Hayes.

6. Plaintiff Iota Weatherwax is a citizen of the United States, and resides in San Mateo County. She lives with her five minor children in the home of her daughter and son-in-law, who have four minor children. The three-bedroom house is oppressively overcrowded. Mrs. Weatherwax receives \$263.00 a month from the Welfare Department. She is supposed to receive support money as well, but has not received support money for about three months. On her income she cannot find a home for herself and her five minor children. Decent housing for a family of six would require a three-bedroom house at the least. Mrs. Weatherwax has searched exhaustively, but has found no house she can afford. Even the most run-down three-bedroom house that is available is too expensive for her.

7. Mrs. Weatherwax is afraid of breaking up her daughter's marriage if she remains with her. Her daughter and son-in-law have no privacy at all and there is a good deal of tension owing to the overcrowding. She is faced with the alternatives of breaking up her own family or staying in her daughter's house and possibly breaking up that marriage. Mrs. Weatherwax called defendant Housing Authority

seeking public housing in March of 1969. She was told that she could not be interviewed until June 5. On that day, she was interviewed, determined to be eligible, and placed on the waiting list. In August 1969, she was placed on the emergency waiting list. By reason of the operation of Article XXXIV of the California Constitution, no public housing is available for her or for anyone else on the list. If placed in public housing, Mrs. Weatherwax could obtain decent, safe and sanitary housing for about \$75.00 a month, five dollars less per month than she now pays her daughter as her share of a three-bedroom dwelling that houses twelve inhabitants. Plaintiff Iota Weatherwax's Affidavit, marked Exhibit D and attached hereto, is incorporated by reference into this Complaint.

8. Plaintiffs Carroll Peil, Lawrence Peil, Mary Peil, Donna Peil, and Robert Weatherwax are the minor children of Iota Weatherwax. They sue herein by their general guardian, Iota Weatherwax.

9. Plaintiff Jo-Ann Brown is a black citizen of the United States, and a resident of San Mateo County. She lives in a one-bedroom apartment with her three minor children. The house was infested with roaches, is overcrowded, run-down, and in need of painting. There are no garbage cans provided. She and the other seven tenants of the building have to put their garbage in paper bags outside. The face bowl in her bathroom broke away from the wall and her apartment was flooded. Despite numerous requests, the landlord has not made necessary repairs.

10. Mrs. Brown had been receiving welfare, was employed for a short time, and has now applied for welfare again. At the present time she does not have any income. She has been determined to be eligible for public housing and has been on the waiting list since 1968. By reason of the operation of Article XXXIV of the California Constitution, no public housing is available for her or for anyone else on the list. Plaintiff Brown's Affidavit, marked Exhibit E and attached hereto, is incorporated by reference in this Complaint.

11. Plaintiffs Karen Jackson, Kevin Jackson, and Kenneth Jackson are the minor children of Jo-Ann Brown. They sue herein by their general guardian, Jo-Ann Brown.

12. Plaintiff Shirley Mae Luke is a black citizen of the United States and resides in San Mateo County. She lives in a one-bedroom house with her son who is $2\frac{1}{2}$ years old. The house is infested with roaches and run-down. She receives \$148.00 a month from welfare, \$90.00 of which goes for rent.

13. In July 1969, Mrs. Luke called for an appointment with defendant Housing Authority to apply for public housing and was told that she could not have an appointment to determine eligibility until December 18, 1969. She was given an appointment for that date. She is eligible for public housing. If she were placed in public housing, she would pay only one-half of the gross value of rent a month for a two-bedroom apartment. By reason of the operation of Article XXXIV of the California Constitution, no public

housing is available for her or for any person similarly situated. Plaintiff Luke's Affidavit, marked Exhibit F and attached hereto, is incorporated by reference into this Complaint.

14. Plaintiff Sylvester Jones is the minor child of Shirley Mae Luke. He sues herein by his general guardian, Shirley Mae Luke.

15. Plaintiffs sue on their own behalf and on behalf of all persons similarly situated. The class is so numerous that joinder of all members is impracticable. There are questions of law and questions of fact common to the class; the claims of the named plaintiffs are typical of the claims of the class; and the named plaintiffs will fairly and adequately protect the interests of the class. The defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and declaratory relief with respect to the class as a whole. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

16. Defendant Housing Authority of the County of San Mateo is a public entity established pursuant to California Health and Safety Code §§ 34200 *et seq.* In March of 1941, the Board of Supervisors of San Mateo County, acting pursuant to law, passed a resolution declaring the need for a Housing Authority so that public housing projects would be undertaken in the County to provide safe and sanitary dwelling ac-

commodations, which would be available to persons of low income at rentals they could afford. The Resolution, marked Exhibit G and attached hereto, is incorporated by reference into this Complaint.

17. Defendant Weman is the Executive Director of the Housing Authority. Defendants Ichinose, Albrecht, Bygdnes, Rucker, and Tassos, are duly appointed Commissioners of the Housing Authority. Each defendant is sued individually and in his official capacity.

18. Defendants are authorized and responsible by law to administer and implement in San Mateo County any and all public housing programs under the Housing Act of 1937.

III. *Facts*

19. In 1937, Congress passed the United States Housing Act of 1937, 42 U.S.C. §§ 1401 *et seq.* The Act expressly states it to be the Nation's policy to employ the Nation's funds to assist the States to remedy unsafe and unsanitary housing conditions and an acute shortage of decent, safe and sanitary dwellings for families of low income—evils which were found to be injurious to the health, safety, and morals of the citizens of the Nation. The purpose of the Act was to enable the provision of an adequate supply of low-rent housing, defined as decent, safe and sanitary dwellings within the financial reach of families of low income. Families of low income were defined as the lowest income group, who cannot afford to pay enough to cause private enterprise in their locality

or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use.

20. The Act created the United States Housing Authority (the name has since been changed to the Public Housing Administration) in the Department of Housing and Urban Development. The Authority was empowered to make preliminary loans to public housing agencies to assist the planning of low-rent housing projects; loans, to assist the development, acquisition, and administration of low-rent housing projects; annual contributions, to assist in achieving and maintaining the low-rent character of the housing projects; and capital grants, in special circumstances. Under the Act, the Authority may only make a preliminary loan when the governing body of a locality has by resolution approved the application of a local public housing agency for such a loan, and the public housing agency has demonstrated to the Authority the need for low-rent housing which is not being met by private enterprise. The Authority may then make contracts for loans or annual contributions only if the governing body of the locality has entered into an agreement with the local public housing agency providing for the local cooperation required by the Authority, and the Authority is satisfied with the project plans.

21. In order to implement the Housing Act of 1937, California enacted the Housing Authorities Law (Health and Safety Code §§ 34200 *et seq.*) That law included specific legislative findings that insanitary and unsafe dwelling accommodations exist in the

State where persons of low income are forced to reside; that there is a shortage of safe and sanitary dwelling accommodations available at rents which low-income people can afford; that such persons must live in overcrowded and congested dwelling accommodations; and that such conditions constitute a menace to the health, safety, morals, and welfare of the residents of the State.

22. The Housing Authorities Law provides for a public corporate body to be formed in each county and city known as the Housing Authority. That Authority cannot transact business or exercise powers unless by resolution the governing body of the county or city declares that there is a need for an Authority. The Authority may borrow money or accept grants from the Federal Government and do any and all things necessary to secure the financial aid of the Federal Government. It may issue bonds for any of its corporate purposes. In accordance with the requirements of the Housing Act of 1937, any low-rent housing project proposal must be approved by the governing body of the county or city where it will be developed.

23. On March 18, 1941, by Resolution No. 468, the Board of Supervisors of San Mateo County declared the need for a Housing Authority pursuant to the Housing Authorities Law. The Resolution is attached hereto, marked Exhibit G.

24. By initiative Constitutional Amendment, Article XXXIV was added to the California State Con-

stitution in 1950. That Article provides in relevant part:

Section 1. No low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any state public body until, a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire the same, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.

For the purposes of this article the term "low rent housing project" shall mean any development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a state public body or to which the Federal Government or a state public body extends assistance by supplying all or part of the labor, by guaranteeing the payment of liens, or otherwise. . . .

For the purposes of this article only "persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the state public body developing, constructing, or acquiring the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

25. In accordance with Article XXXIV, defendant Housing Authority of San Mateo County caused two referenda to be held on low income projects for

the elderly in Pacifica in 1966. Both failed. Certified copies of the election results, marked Exhibit H and I, respectively, and attached hereto, are incorporated by reference into this Complaint.

26. By reason of the failure of these referenda and by reason of the belief that any proposal for public housing in San Mateo County would be overwhelmingly defeated in the referendum required by Article XXXIV, defendants have caused no referenda to be held in the County since 1966. For the same reasons, they do not now plan to propose any low-income public housing projects for approval by referendum. It is the belief of defendant Executive Director Weman that fear of property devaluation on the part of middle-and-above-income residents, coupled with their fear of an influx of low-income and minority-group families, preempts the possibility of a successful referendum. Mr. Weman's Affidavit, marked Exhibit J and attached hereto, is incorporated by reference into this Complaint.

27. Defendants believe themselves bound by the requirements of Article XXXIV of the California Constitution to secure approval by referendum for any low-income housing development. In the enforcement of Article XXXIV, they will not proceed to make application for federal funds or to take any other step directed toward the development of low-income public housing under the Housing Act of 1937 unless and until authorized by a referendum. And they will not cause any referendum on low-income public housing to be held, because they are convinced

that it would fail. Plaintiffs have no means to require defendants to hold a referendum.

28. San Mateo County now has a drastic need for low-income housing that is not being met, and cannot be met, by private enterprise. Plaintiffs and their class comprise thousands of persons who do not have, and cannot afford, safe, sanitary and decent housing. Defendant Housing Authority now has a waiting list of 2,000 families who have been determined to be eligible for low-income public housing. Other families have applied for such public housing but have not yet been determined to be eligible; they are calendared for interviews to determine eligibility. The interview calendar is so crowded that persons phoning the Authority in the month of September 1969 are being scheduled for interviews in December 1969.

29. There is now no low-income public housing available in San Mateo County.

30. No low-income public housing can or will be developed in San Mateo County so long as the defendants continue to enforce Article XXXIV of the California Constitution.

31. But for the operation of Article XXXIV, the defendants would be authorized and able to cause the development of low-income public housing in San Mateo County, with the assistance of federal funds available under the Housing Act of 1937. Such housing would be available to plaintiffs and persons similarly situated.

IV. *First Claim*

32. Article XXXIV of the California Constitution violates the rights of the plaintiffs under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, in that:

A) On its face and as applied, it creates, encourages and requires invidious discrimination against the plaintiffs as poor persons, because of their poverty, in regard to access to safe, sanitary and decent housing; and

B) In its design and necessary effect, and in its actual operation, it creates, encourages and requires invidious discrimination against the plaintiffs as black persons, because of their race, in the same regard.

33. For the reason stated in paragraph 32(B) above, Article XXXIV also violates the rights of the plaintiffs, as black persons, under 42 U.S.C. §§ 1981 and 1982, to acquire interests in real property, and to have the protection of law for those property interests, on an equal footing with white persons, without discrimination based on race.

34. Article XXXIV thereby discriminatorily denies the plaintiffs access to safe, sanitary and decent housing. By reason of the operation of Article XXXIV, no public housing is available, or can be made available, for the plaintiffs and persons similarly situated, in San Mateo County. By compulsion of Article XXXIV, the defendants have failed, are failing, and will fail to provide for the plaintiffs safe, sanitary and decent housing which the defendants are otherwise authorized and able to provide with the

assistance of federal funds available under the Housing Act of 1937.

35. Therefore there exists between the plaintiffs and the defendants an actual controversy regarding the constitutional validity of Article XXXIV under the Equal Protection Clause, the Supremacy Clause, and 42 U.S.C. §§ 1981 and 1982. That controversy requires that this Court declare Article XXXIV unconstitutional and enjoin its enforcement by the defendants.

V. *Second Claim*

36. Article XXXIV of the California Constitution violates the rights of the plaintiffs under the Housing Act of 1937, and thereby under the Supremacy Clause and the Privileges and Immunities Clause of the Fourteenth Amendment, in that:

A) On its face and as applied, it burdens and frustrates the operation of the Housing Act, and deprives the plaintiffs of benefits which the Housing Act seeks to confer upon them; and

B) On its face and as applied, it is inconsistent with the provisions of the Housing Act because it:

1) Subjects the benefits sought to be conferred upon the plaintiffs by the Housing Act to licensure by local referendum, which is incompatible with the provisions of the Act and defeats its purposes;

2) Authorizes and encourages discrimination against the plaintiffs on the grounds of race and poverty in the administration of the Act, incompatibly with the purposes of the Act; and

3) Subjects the benefits sought to be conferred upon the plaintiffs by the Housing Act to an unconstitutional condition, as described more fully in the **FIRST CLAIM**, above.

37. Article XXXIV thereby denies the plaintiffs access to safe, sanitary and decent housing which is their right under the Housing Act and the Supremacy Clause, and a privilege of citizenship conferred by national legislation. By reason of the operation of Article XXXIV, no public housing is available, or can be made available, for the plaintiffs and persons similarly situated, in San Mateo County. By compulsion of Article XXXIV, the defendants have failed, are failing, and will fail to provide for the plaintiffs safe, sanitary and decent housing which the defendants are otherwise authorized and able to provide with the assistance of federal funds available under the Housing Act.

38. Therefore there exists between the plaintiffs and the defendants an actual controversy regarding the validity of Article XXXIV under the Housing Act, the Supremacy Clause, and the Privileges and Immunities Clause of the Fourteenth Amendment. That controversy requires that this Court declare Article XXXIV invalid and enjoin its enforcement by the defendants.

VI. *Injury to Plaintiffs; Equity*

39. By the operation of Article XXXIV, plaintiffs have been, are being, and will be deprived of their federal rights to safe, sanitary and decent hous-

ing. They will daily be forced to live, as they have been living, in overcrowded, unsanitary and demeaning conditions; and they will daily be required to expend for housing monies that they cannot afford and that they need for food, clothing and other necessities. The rights of which they are thus deprived are of a value, to each of them, in excess of \$10,000. Those rights are irreparably damaged by the conduct of the defendants under Article XXXIV, which conduct daily denies the plaintiffs the safe, sanitary and decent housing to which they are entitled by federal law.

40. Unless this Court declares Article XXXIV invalid and enjoins its enforcement, plaintiffs will continue to be deprived, as they have heretofore been deprived, of their federal rights to safe, sanitary and decent housing, and their rights against discrimination on account of race and poverty in access to housing. Plaintiffs have no adequate remedy at law for the redress of this deprivation, nor any other remedy than the declaratory and injunctive process of this Court. A declaration that Article XXXIV is invalid and an injunction of its enforcement by the Court is necessary to protect the plaintiffs against irreparable injury. Such a declaration and injunction will do no harm to the valid and legitimate interests of the defendants or the State of California.

VII. *Prayer for Relief*


41. Accordingly, plaintiffs request that:

A) A statutory three-judge court be convened to hear this matter, as required by 28 U.S.C. §§ 2281, 2284;

B) After plenary hearing of the facts and the law, the Court declare Article XXXIV of the Constitution of the State of California invalid;

C) The Court issue its injunction restraining the enforcement of Article XXXIV by the defendants; and

D) The Court decree such other and further relief to the plaintiffs as may appear lawful, just and equitable.

Dated: September 29, 1969. 

/s/ Lois P. Sheinfeld

Attorney for Plaintiffs

2221 Broadway

Redwood City, California 94063

(Notary affidavit omitted)

Exhibit A

(Letterhead of City of Menlo Park)
Office of George A. Asborno
Building Official

July 8, 1969

Re: 220 Hamilton Avenue

Myrtle Lugent
2359 Palo Verde
Palo Alto, Calif.
Dear Mrs. Lugent:

In the recent inspection of your property by the Menlo Park Housing Inspection Team the following Housing Code violations were found:

- (1) Uniform Housing Code, Section H1001(b)12.
Inadequate Sanitation.

"Infestation of insects, vermin or rodents as determined by the health officer, Mr. Brian Brumm, of the San Mateo County Department of Public Health."

The roaches and mice must be eliminated by a State Licensed Exterminator. The exterminator must furnish a written notice to the Building Department that the infestation has been eliminated from the premises.

- (2) Uniform Housing Code, Section H1001(k).
Hazardous or Unsanitary Premises.

"Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rat harborages, stagnant

water, combustible materials, and similar materials or conditions constitute fire, health, or safety hazards."

There must be a general clean-up of the yard. All weeds, high grass and overgrown trees and shrubs must be cut and removed from the property to alleviate the danger of fire and rodent or insect infestation.

The fence is in disrepair and must be repaired, replaced, or removed.

(3) Uniform Building Code, Table 5B.

- a. The one hour fire wall between the garage and house is broken through and must be repaired.
- b. There must be a fire door between the kitchen and garage. This must be 1 3/8" solid core, self closing, and tight fitting.

The present door could be made to conform by placing 1/2" sheet rock on the garage side in the indentation, and covering the door with 20 gauge galvanized sheet metal or 1/4" asbestos board, properly attached with screws.

(4) Uniform Housing Code, Section H1001(c)4.
Structural Damage.

There is structural damage to the garage wall. This damage must be repaired.

(5) Uniform Housing Code, Section H1001(f).

Hazardous Plumbing.

- a. The cement wash tray is illegal. (U.P.C., Sec. 905(b)). The wash tray must be removed and replaced with a trapped sanitary sewer connection with 18" to 30" stand pipe. (U. P.C., Sec. 604).
- b. The copper gas line is illegal (U.P.C., Section 1212). The gas line must be replaced.

(6) Uniform Housing Code, Section H1001(b)13.

Inadequate Sanitation.

- a. The foundation vent screens are broken and must be repaired.
- b. The walls and ceiling in the kitchen and bathroom must be painted with an approved non-absorbent paint (enamel). All holes and defects must be patched.
- c. The kitchen drainboard is defective and we recommend that it be regROUTED and sealed.

(7) Uniform Housing Code, Section H505(e).

Water Closet Compartments.

The bathroom floor must be repaired or replaced with a proper non-absorbent floor tile.

(8) Uniform Housing Code, Section 41001(h).

Faulty Weather Protection.

- a. There are broken windows which must be replaced.
- b. The City of Menlo Park recommends that the exterior woodwork be painted.

(9) Menlo Park Ordinance #441.

"Grading shall be performed around every building so as to provide a slope away from the building with a minimum grade of one-half inch per foot ($\frac{1}{2}$ " per 1') for a distance of at least thirty inches (30") from the building. If in the Building Official's opinion, water will collect and remain in the sub area, some means of removing the water shall be provided to the satisfaction of the Building Official."

Due to improper grading, the building site is ponding water next to the building. The water must be eliminated.

(10) Uniform Housing Code, Section H1001(g).

Hazardous Mechanical Equipment.

- a. The wall space heater is defective and must be repaired or replaced.
- b. The wall over the heater is defective. This wall must be replaced.

(11) Uniform Housing Code, Section H1101(e).

Hazardous wiring.

There is illegal electric wiring on the premises. This wiring must be made to conform to electrical codes or removed. An electrical inspection by the Menlo Park Building Inspector will be required.

(12) Uniform Building Code, Section 3305(c).
Rise and Run.

"The rise of every step in a stairway shall not exceed seven and one-half inches ($7\frac{1}{2}$ "") and the run shall be not less than ten inches (10"). Except as provided under Subsection (d) the maximum variations in the height of risers and the width of treads in any one flight shall be three sixteenths inch ($3/16$ "").

EXCEPTION: In private stairways serving an occupant load of less than 10 the rise may be eight inches (8") and the run may be nine inches (9").

The stair leading from the house to the garage is defective and must be replaced.

The roaches and mice must be eliminated by July 17, 1969 and the remainder of the violations must be corrected by July 28, 1969.

If you have any questions please contact the Building Department, 325-3211.

Very truly yours,
/c/ Gene C. Krummel
Housing Inspector

GCK:cp

cc: Health Department
Gussie Hayes, Tenant

Exhibit B

NOTICE

Abatement of Public Nuisance
Requiring Repair, Rehabilitation and
Maintenance of Property

City of Menlo Park, California

Subject Property: 220 Hamilton Ave.
Assessor's Parcel No. 055-352-020

Pursuant to Chapter 17, Menlo Park City Code, NOTICE is hereby given to the owner, occupant, or other person in control of subject property, that the City Code violations described on the attached "list of violations" are required to be corrected within 4 days from the date of this notice.

If these violations are not corrected by said time, the City will have the violations corrected. The cost of such work and any and all sums expended by the City shall become a lien on the subject property and a personal charge against the owner of the property and the person creating the condition constituting the violations.

Date of Notice: September 11, 1969

For the City Manager
By /s/ George A. Asborn
Building Official

Violations

- (1) Uniform Housing Code, Section H1001(b)12.

Inadequate Sanitation.

"Infestation of insects, vermin or rodents as determined by the health officer, Mr. Brian Brumm, of the San Mateo County Department of Public Health".

The mice must be eliminated by a State Licensed Exterminator. The exterminator must furnish a written notice to the Building Department that the infestation has been eliminated from the premises.

- (2) Uniform Housing Code, Section H1001(b)1.

Inadequate Sanitation.

The bathtub sanitary sewer drain is plugged-up.

The bathtub sanitary sewer line must be opened.

- (3) Uniform Housing Code, H1001(d). Nuisance.

The main sewer lateral has a partial stoppage and is open in the back yard in at least one place. The sewer lateral must be repaired and un-stopped. There must be an inspection by the Building Department before the sewer lateral is back-filled.

Exhibit C

AFFIDAVIT

State of California
County of San Mateo—ss.

Gussie Hayes, being sworn, says:

I am a citizen of the United States, and reside in Menlo Park, San Mateo County. I am the mother of six minor children: Diane Hayes, age 12; Carolyn Hayes, age 11; Cathy Hayes, age 10; Tommy Hayes, age 7; Barbara Hayes, age 6; and Danny Hayes, age 5. All of my children live with me except Barbara, who is now staying with my sister.

I reside with my family in a three bedroom house which is infested with mice and roaches. For some time the sewer line in the backyard was broken, and it was flushing into the yard and smelling very badly. I contacted Legal Aid about the terrible conditions in my house, and they had the City of Menlo Park come out to look at it. The City told the landlord that if he did not correct violations, they would, and place a lien on the property. The landlord did put some cement over the hole, but now there is a backup of sewage in the toilet and bathtub. My children cannot take baths at home or use the toilet, and they have to go to my sister's house to use the bathroom. The landlord also sprayed the roaches, but there are still roaches and mice in the house. The children are afraid of the mice and hate to stay in the house. The whole house now smells of sewage.

For this house I pay \$140.00 a month rent. I cannot find a decent, sanitary house for that money. I have looked very hard.

I have been on the waiting list for public housing for about eight months. The Housing Authority told me that if I were placed with them, I would pay \$75.00 a month for a three bedroom house or apartment, and it would be clean and sanitary.

My income each month is about \$418.00, \$110.00 from my husband, and \$308.00 from the Welfare Department. With the lower rent, I could afford many necessary things for my children which I cannot give them now. My daughter, Barbara, is living with my sister, who took her in order to get at least one of the children out of the house. If I had public housing, I would be able to have my daughter back and be able to live with my family in a clean and safe house. The Housing Authority is unable to tell me when I will be placed.

/s/ Gussie M. Hayes

Subscribed and sworn to before me this 24th day of September, 1969.

(Seal)

/s/ Betty W. Carroll

Notary Public in and for the
County of San Mateo, Calif.

My commission expires May 13, 1973.

Exhibit D

AFFIDAVIT

State of California
County of San Mateo—ss.

Iota Weatherwax, being sworn, says:

I am a citizen of the United States and reside in Pacifica, San Mateo County. I am the mother of six children: Karen Briemle, age 23; Carroll Peil, age 20; Lawrence Peil, age 12; Mary Peil, age 10; Donna Peil, age 6; and Robert Weatherwax, age 4. I live with all of my children in the home of my married daughter, Karen. Karen and her husband have four minor children of their own who also reside in the house. There are twelve people living in the house, which only has three bedrooms.

The house is terribly overcrowded, and my daughter and her husband have no privacy. I am so grateful to her for taking me and my children in, but I fear for her marriage. I really don't know what to do.

My Social Worker called the Housing Authority in February or March of 1969, but she could not get me an appointment until June 5th. On that day I did have an appointment and was placed on the waiting list for public housing. In August I was placed on the emergency waiting list, but I have heard nothing. When I do call the Housing Authority I am told that nothing is available and to look on my own.

I have tried very hard to find a place on my own, but it is very difficult for me because I have trouble

with my leg, and I do not have a car. I did place my name on real estate lists, and I have looked for a house, but I cannot find one I can afford. The cheapest house I could find was \$185.00 a month, and very run-down and unsanitary. The Housing Authority has a maximum limit of \$155.00 on leased homes, so they would not even look at it. They also said that I would have to have three bedrooms because of the number of children. Three bedroom houses are very expensive, and I cannot afford them.

My income amounts to \$263.00 a month, which I receive from the Welfare Department. I am suppose to receive \$75.00 a month from Mr. Peil, but he hasn't paid it in three months. I pay my daughter \$80.00 a month for rent, and I can barely afford that. If I was placed with the Housing Authority, I could get a three bedroom house or apartment for about \$75.00 a month.

I want to keep my family together, but I am afraid of breaking up my daughter's marriage if I remain with her. I am desperate.

/s/ Iota Weatherwax

Subscribed and sworn to before me this 24th day of September, 1969.

(Seal)

/s/ Michael F. Silberstein,
Notary Public in and for the
County of San Mateo, Calif.

My commission expires October 10, 1972.

Exhibit E

AFFIDAVIT

State of California
County of San Mateo—ss.

Jo Ann Brown, being duly sworn, says:

I am a citizen of the United States and a resident of the City of Menlo Park, State of California. I live with my three children, Karen, Kevin, and Kenneth Jackson, ages six (6), five (5), and three (3), respectively, in a one bedroom apartment for which I pay Seventy-Five Dollars (\$75.00) per month rent.

This apartment, in addition to being too small for my family, is quite run down. The wash basin in the bath room has fallen off of its base, and in spite of my many requests to the landlord to repair it, it still has not been corrected. At the time the wash basin fell, my apartment was flooded, causing great damage to the floor coverings. The landlord has failed to provide containers for garbage disposal, and all of the tenants simply store their garbage in paper bags until it is collected by the scavenger.

I applied for housing through the San Mateo County Housing Authority in 1968, but to date I have not been placed.

I have an application pending with the County Welfare Department, but at the present time I do not have any steady income.

/s/ Jo Ann Brown

Subscribed and sworn to before me this 30th day of September, 1969.

(Seal)

/s/ Esther M. Larsen,

Notary Public in and for the
County of San Mateo, Calif.

My commission expires November 23, 1970.

Exhibit F**AFFIDAVIT**

State of California

County of San Mateo—ss.

Shirley Mae Luke, being first duly sworn says:

I am a single woman and a citizen of the United States residing in Menlo Park, California. The apartment in which I live with my son Sylvester Luke, Two and one-half (2-1/2) years old, is a one bedroom unit which is in very poor condition and infested with roaches; and the rent is Ninety Dollars (\$90.00) per month.

In or about July of 1969, I contacted the San Mateo Housing Authority for placement as a tenant in the Leased Housing Program, but I was informed that I can not be interviewed to determine whether I am eligible for the Leased Housing Program until December 18, 1969.

/s/ Shirley May Luke

Subscribed and sworn to before me this 30th day of September, 1969.

(Seal)

/s/ Esther M. Larsen,
Notary Public in and for the
County of San Mateo, Calif.

My commission expires November 28, 1970.

Exhibit G

Board of Supervisors

Filed Mar 18 1941

W. H. Augustus, Clerk

Bk. 37 Page 288

RESOLUTION No. 468

Board of Supervisors, County of San Mateo, State of California.

Resolution Declaring the Need for a Housing Authority in the County of San Mateo

Be It Resolved by the Board of Supervisors of the County of San Mateo:

That the Board of Supervisors of the County of San Mateo, California, hereby determines, finds and declares, in pursuance of the "Housing Authorities Law" of the State of California, that:

- (1) Insanitary and unsafe inhabited dwelling accommodations exist in the County of San Mateo, California;
- (2) There is a shortage of safe and sanitary dwelling accommodations in the County of San Mateo, California, available to persons of low income at rentals they can afford;
- (3) There is need for a Housing Authority in the County of San Mateo, California; and
- (4) This resolution is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and

safety and shall therefore go into immediate effect. A statement of the facts constituting such necessity is as follows:

Unemployment and the existence of unsafe, insanitary and congested dwelling accommodations in the County of San Mateo, California, have produced an alarming economic and social condition therein. The immediate adoption of this resolution will enable housing projects to be undertaken in this County and furnish employment to many persons now idle, and enable them to become self-supporting, and will alleviate the aforesaid housing conditions.

Regularly passed and adopted this 18th day of March, 1941.

Ayes and in favor of said resolution:

Supervisors: T. L. Hickey
Fred E. Beer
J. W. Poole
Alvin S. Hatch
J. W. Lynch

Noes and against said resolution:

Supervisors: None.

Absent Supervisors: None.

/s/ Fred E. Beer, Chairman,
Board of Supervisors, County of
San Mateo County, California.

Attest:

W. H. Augustus,
Clerk of said Board.

Supervisor Lynch introduced Resolution No. 468 and moved its adoption.

The motion to adopt said resolution was seconded by Mr. Hatch, and upon roll call the following voted Yea: Messrs. Hickey, Poole, Hatch, Lynch, Beer. Nay: Messrs. None.

Thereupon the Chairman declared said resolution duly adopted and passed.

Mr. Lynch then moved that said Resolution No. 468 go into effect immediately, as provided in Section 4 thereof, which Section was then read in full. The motion was seconded by Mr. Hatch and thereupon the Chairman put the question on the adoption of said motion, and upon roll call the following voted Yea: Messrs. Hickey, Poole, Hatch, Lynch, Beer. Nay: Messrs.

Whereupon the Chairman stated that said motion had received the affirmative vote of more than a majority of the Board of Supervisors and declared the same duly adopted.

Exhibit H

**Certificate of County Clerk of Record of
Votes Cast For and Against the Proposition
Submitted to the Voters at the Polling Places
Within the City of Pacifica at the General
Election Held on November 8, 1966.**

In accordance with Resolution No. 899 of the City Council of the City of Pacifica, adopted August 24, 1966, wherein authorization was given to the Board of Supervisors of the County of San Mateo to conduct the canvass of the returns of the special municipal election, which was consolidated with the statewide election held on Tuesday, 8th Day of November, 1966, by order of the Board of Supervisors of the County of San Mateo, expressed in its Resolution No. 23059, for the purpose of submitting to the voters of the City of Pacifica, pursuant to said Resolution No. 899, a proposition identified as "Senior Citizens Housing" on the consolidated ballot, I hereby certify that I caused to be removed and recorded from the voting machines used at said election the record of votes cast at said polling places within said city for and against the proposition voted upon, and I caused to be canvassed the absentee ballots cast at said election for and against the proposition voted upon and that I caused to be filed with the Board of Supervisors of the County of San Mateo on November 22, 1966, a certificate which included the result of the canvass of all of the votes cast at said special municipal election together with the result of votes cast at the said statewide election.

On motion of Supervisor Fitzgerald seconded by Supervisor Werder the Board of Supervisors of the County of San Mateo approved said certificate of the votes cast at said statewide election and said special municipal election.

And I further hereby certify that Exhibit "A" hereto attached and by reference incorporated herein, is a full, true and correct tabulation which states forth the results of the votes cast at the polling places for and against the proposition voted upon within said city and the result of the canvass of the absentee ballots cast and voted for and against said proposition at said special municipal election, and that the figures in said tabulation indicating the results of votes cast at said special municipal election are identical to the figures contained in the certificate approved by the Board of Supervisors of San Mateo County.

Dated this 22nd day of November, 1966.

(Seal)

John A. Bruning,
County Clerk of the County
of San Mateo

Exhibit "A"

Statement of Result of Votes Cast on municipal measure submitted to the voters of the City of Pacifica at a special municipal election consolidated with the statewide election held on Tuesday, November 8, 1966, which measure was identified as "SENIOR CITIZENS HOUSING" on the consolidated ballot.

CITY MEASURE

<u>Precinct</u>	<u>Yes Votes</u>	<u>No Votes</u>	<u>Total Votes</u>
1	80	86	166
2	116	57	173
3	106	120	226
4	84	82	166
5	92	50	142
6	145	121	266
7	117	85	202
8	113	96	209
9	132	110	242
10	114	160	274
11	121	121	242
12	107	147	254
13	47	43	90
14	108	150	258
15	120	122	242
16	116	147	263
17C	131	157	288
18	127	145	282
19	98	135	233

CITY MEASURE

<u>Precinct</u>	<u>Yes Votes</u>	<u>No Votes</u>	<u>Total Votes</u>
20	121	150	271
21	112	131	243
22	120	166	286
23	111	107	218
24	112	151	263
25	122	155	277
26	109	160	269
27	64	73	137
28	108	77	185
29	118	128	246
30	41	59	100
31	61	128	189
32	58	122	180
33C	115	210	325
35	62	104	166
36C	101	158	259
Absentee Vote	69	80	149
Total Votes Cast	3,678	4,293	7,971

Exhibit I**RESOLUTION No. 865**

Resolution of the City Council of the City of Pacifica confirming canvass of returns by City Clerk and declaring result of Consolidated General Municipal Election and Special Municipal Bond Election

Whereas, the City Clerk of the City of Pacifica has duly canvassed the votes cast in the City of Pacifica (hereinafter called the "City") at the consolidated general municipal election and special municipal bond election held on April 12, 1966, in the City, by the electors of the City for the candidates and upon the measures hereinafter set forth, and has certified to this City Council the result of the votes cast at said election for said candidates and upon said measures, which said certificate is now on file in the office of the City Clerk of the City;

Now, therefore, be it resolved by the City Council of the City of Pacifica as follows:

1. Said canvass by said City Clerk as shown by said certification and the result of said election is hereby ratified, confirmed and approved, and the City Council finds and determines that the total number of votes cast in the City at said consolidated general municipal election and special municipal bond election and the total number of votes given in each precinct and by absentee voters of the City for each candidate and for and against said measures was and is set forth in said canvass by said City Clerk.

2. At said election the number of votes cast in the City for each of the candidates (including absentee votes) was as follows:

<u>Office</u>	<u>List of Names of Candidates</u>	<u>Total</u>
Member of City Council	Fred Ballew Incumbent	1,892
	Donald J. McMannis Incumbent	2,029
	Harland Minshew Incumbent	2,864
	Basil I. "Bas" Gladieux Civic Leader- Businessman	1,692
	Nick Gust Local Businessman	2,686
	William R. Hartz General Manager	450
	Robert E. Keating Electrician	482
	George H. Mason, SR. Real Estate	769
	Frank M. Wright Teacher	1,098

3. Harland Minshew, Nick Gust and Donald J. McMannis received the highest number of votes cast for the office for which each was a candidate and said persons were thereby elected to said office for the term hereinabove set forth, and the City Clerk is hereby authorized to sign and deliver thereto a Certificate of Election and to administer thereto the Oath of Office prescribed in the Constitution of the State of California.

4. At said consolidated general municipal election and special municipal bond election the following

measures were submitted to the electors of the City and the number of votes given in the City for and against each of said measures (including absentee votes) was as follows:

	Total Vote "YES"	Total Vote "NO"
MEASURE (A): Shall the City of Pacifica incur a bonded indebtedness in the principal amount of \$1,865,000 for the acquisition of the following municipal improvement, to wit: Public recreational areas, including lands, easements and rights of way necessary or convenient for public recreational areas, parks and beaches for the City of Pacifica?	1,665	3,166
MEASURE (B): Shall the City of Pacifica incur a bonded indebtedness in the principal amount of \$300,000 for the acquisition of the following municipal improvement, to wit: Civic center site, including lands, easements and rights of way necessary or convenient for a civic center site for the City of Pacifica?	1,354	3,449
MEASURE (C): Shall the Housing Authority of the County of San Mateo develop, construct and acquire in the City of Pacifica, with Federal financial assistance, a low rent housing project or projects of not to exceed in the aggregate of 200 dwelling units for living accommodations designed specifically for elderly persons of low income?	1,834	2,993

5. That less than $\frac{2}{3}$ of all of the votes cast at said election on said Measure A were in favor of said measure and that said measure failed to pass.

6. That less than $\frac{2}{3}$ of all of the votes cast at said election on said Measure B were in favor of said measure and that said measure failed to pass.

7. That less than a majority of all of the votes cast at said election on said Measure C were in favor of said measure and that said measure failed to pass.

Passed and adopted April 19, 1966, by the following vote:

Ayes: Councilmen Ballew, McCarthy, McMannis, Minshew and Mayor Fox.

Noes: None.

Absent: None.

/s/ James A. Fox
Mayor of the City of Pacifica

Attest:

/s/ Karl A. Baldwin
City Clerk

(Certifications to Resolution omitted)

Exhibit J

AFFIDAVIT

State of California,
County of San Mateo—ss.

William G. Weman, being sworn, says:

I am the Executive Director of the Housing Authority of the County of San Mateo. This agency is formed under the Health & Safety Code Sec. 34200-34521 of the State of California. Its purpose is to locate in the county decent, safe and standard living quarters for low-income individuals and families. There is no other public agency to deal with the housing problems of the poor.

The Housing Authority cannot effectively carry out its charge to provide decent, safe and standard housing for low-income families unless it can gain access to the available Federal funds for acquisition and construction, and this in turn cannot be done as long as Article XXXIV of the State Constitution remains in effect. It is the belief of the affiant that fear by middle and above income residents of a devaluation of property, coupled with social fears of minority and low-income family influx, preempts a possibility of a successful referendum.

In this very affluent county the possibility of referendum passage is highly remote. Two attempts were made to the voters of the City of Pacifica on the question of Senior Citizens housing—both failed. A referendum called in the City of Half Moon Bay in

1961 on the question of a 50-unit locally funded (non-federal) Senior Housing was successful because of local interest. Today, however, passage would be very doubtful on a question of Senior Housing, and would be overwhelmingly defeated on the question of "public housing."

Because Article XXXIV requires a local referendum on the question of building or acquiring housing, this agency is restricted to utilizing a leasing program financed by the Federal Government under Section 23, as amended, of the 1937 Housing Act. Some cities in this county are concerned about the "effect" of our leasing program in their areas. By State and Federal law an enabling resolution must be obtained from the governing body of each legal entity prior to providing the rental subsidy to residents. The City of Menlo Park, after authorizing an enabling resolution on July 25, 1967, two years later has placed a Moritorium on the program in that city. This has resulted in a lawsuit yet unresolved.

Housing Authorities were set up because private industry was proving incapable of providing housing within the financial reach of low-income persons. Article XXXIV brings the situation back to the way it was—it is left to private industry to produce low-cost housing, and they are unable to do so because of the interest rates, high labor and material costs, etc.

Our present situation is highly critical. Although our leasing program has housed some 650 families throughout the county, we still have over 2,000 fami-

lies on the waiting list for public housing. Applications are being taken by appointment only, with the appointment list presently running through December, 1969. A zero rental vacancy factor now exists in this county.

There are federally funded programs that could be utilized to relieve this very serious situation, but we are estopped by the existence of Article XXXIV of the State Constitution.

/s/ William G. Weman,
Executive Director.

Subscribed and sworn to before me this 23rd day
of September, 1969.

(Seal)

Betty W. Carroll,
Notary Public in and for the
County of San Mateo, Calif.
My commission expires May 13, 1973.

Exhibit A

[Title of Court and Cause]

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT****AFFIDAVIT OF ELAINE EISENBERG**

State of California,
County of San Mateo—ss.

Elaine Eisenberg, being duly sworn, deposes and says:

I am a citizen of the United States and have resided in San Mateo County for about 21 years. After Proposition 14 was passed, the Fair Housing Council of San Mateo County was established, and I served as Chairman of the Housing Committee for two years, from 1965 to 1967. We placed ads in newspapers, notifying people of the existence of the Fair Housing Council, and attempts were made to find housing for black families.

Common reactions from realtors and homeowners in the County was "wouldn't they be happier with their own people," "I will show you where blacks can rent—in black ghetto areas," "I personally have no bias, but my neighbors would object," "my other tenants would move out," or flat "no's." These discriminatory attitudes were and still are widespread throughout the County.

The emphasis was always on finding houses and apartments to rent, because minority persons did not have enough money to buy homes. Several inquiries were taken from low income families, but nothing at all could be done for them, because the rentals in San Mateo County are quite high.

There has been no real change in attitude, even now with Proposition 14 off the books. I am presently a member of the Housing Sub-Committee of the San Mateo County Human Relations Commission, and I am personally aware that cases of discrimination against blacks in housing exist today in the County. Some of those persons discriminated against are black teachers, actively being recruited by school districts in the County; and others are persons unable to keep jobs and work because they cannot find a place to live.

When Proposition 14 was in effect, I received many threatening calls from persons who did not want equal opportunity in housing, and blacks received flat denials when they attempted to find houses; while this overt prejudice is not as apparent today, the underlying discrimination is. The practices are more subtle, and evasive, but the result is the same. I am sure these discriminatory attitudes caused and will cause the failure of referendum on public housing in the County. The desire to keep blacks with money out of white neighborhoods is even stronger when the blacks are persons of low income. The housing problem today is critical.

Dated: October 23, 1969.

Elaine Eisenberg,

Subscribed and sworn to before me this 23rd day of October, 1969.

(Seal)

/s/ Esther M. Larsen,

Notary Public in and for the

County of San Mateo, Calif.

My commission expires Nov. 23, 1970.

Exhibit B

[Title of Court and Cause]

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

AFFIDAVIT OF GAY LEAH SWENSON

State of California,
County of San Mateo—ss.

Gay Leah Swenson, being duly sworn, deposes and says:

I am a citizen of the United State and a resident of San Mateo County. I have long been aware of the problems of discrimination against black families and persons in housing, and I have been actively working with fair housing groups since 1965. When Proposition 14 was in effect, I worked on a fair housing campaign with the Fair Housing Council of San Mateo County. There were numerous cases of discrimination against black families, and this discrimination continues today. I am presently on the Board of Directors of the San Mateo County Fair Housing Council, and I worked in addition with the Belmont Citizens For Equal Opportunity and the Belmont-San Carlos Social Justice Committee in attempting to secure decent housing for blacks.

Discriminatory practices today include prohibitive extra costs and requirements imposed on leases if blacks wish to rent, but not imposed for white applicants. Expressions of concern for neighbor's feelings, and economic devaluation of property are still articulated as rationalizations for refusals to rent.

There is an unwritten law that West of El Camino Real is verbotem for blacks.

One of the groups most affected in San Mateo County are black teachers. The San Mateo County Union High School District Newsletter stated that black teachers are unable to find housing because of discrimination in the County, and the San Mateo Times reported that black teachers had such difficulty finding homes that they were not able to take jobs in the County and went home. Most of the black teachers live in the black ghettos, where housing is overcrowded, badly rundown and where the vacancy factor is very low. In white neighborhoods where there are vacancies black persons are commonly told that apartments have been rented, even though it was determined before that the apartment was available.

Discrimination against black persons who have money also militates against favorable votes on housing for low income persons, who are largely from the black community.

Fair housing committees exist because discrimination exists, and people who are concerned wish to do anything and everything possible to provide equal opportunity in housing.

Dated: October 27, 1969.

/s/ Gay Leah Swenson

Subscribed and sworn to before me this 27th day of October, 1969.

(Seal)

/s/ Betty W. Carroll,
Notary Public in and for the
County of San Mateo.

My commission expires May 13, 1973.

Exhibit C

[Title of Court and Cause]

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT****AFFIDAVIT OF JANET REFVEM**

State of California,
County of San Mateo—ss.

Janet Refvem, being duly sworn, deposes and says:

I am a citizen of the United States and have been a resident of San Mateo County for about 14 years. My experience with the problems faced by low-income families in obtaining housing began in 1966 when Community House, an organization funded by the Mid-Peninsula Christian Ministry and located in East Palo Alto, formed a Housing Committee out of deep concern for the black residents of that community. I worked with Community House for several years, and I accepted the Chairmanship of the Housing Committee.

East Palo Alto is a black ghetto, beset with the problem of overcrowding and substandard housing at high rentals. The residents cannot move out of the neighborhood because of lack of funds and because of discrimination against blacks in white neighborhoods.

I have attended, and still attend meetings of the Housing Authority in San Mateo County, and have attempted to force them to develop public housing in the County. Black families appeared to speak at the meetings and told of their difficulties in obtaining housing due to high rentals, discrimination and a low vacancy factor. Black mothers have had to place their children in foster homes because they could not find

decent, safe and sanitary housing. The Housing Authority's repeated response is that no public housing can be developed because Article XXXIV of the California State Constitution requires a referendum, and a referendum would fail.

The Housing Committee prepared an intensive report detailing the critical need for public housing. The Housing Committee of the Human Relations Commission of San Mateo County, of which I am a member, is also studying the problem. A group to which I belong, the County Committee For Community Development, an advisory committee for the San Mateo County Board of Supervisors, has also studied and reported the vital need for housing for persons of low income in the County. This need was found to be particularly great in the poverty pockets of Redwood City, Daly City, East Palo Alto and East Menlo Park, areas largely inhabited by black and Mexican-American families. Article XXXIV is causing those persons to continue to live in demoralizing conditions. Their right to safe and sanitary housing should not suffer because of the prevailing discriminatory attitudes in the County. The removal of Article XXXIV would at least give the poor and the minority the chance to have a decent life.

Dated: October 28, 1969.

/s/ Janet Refvem

Subscribed and sworn to before me this 28th day of October, 1969.

(Seal)

/s/ Betty W. Carroll,
Notary Public in and for the
County of San Mateo.

My commission expires May 13, 1973.

Exhibit D

[Title of Court and Cause]

**DECLARATION OF ATTORNEY IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

I, Andrew H. Field, declare as follows:

I am a citizen of the United States and have been a resident of San Mateo County since 1961. My family resided in Pacifica from 1961 to 1964 and in the unincorporated area known as the San Mateo Highlands since 1964. While in Pacifica I was Chairman of Pacificans for Fair Housing, an organization formed in the spring of 1964, primarily to disseminate information for the purpose of persuading citizens to vote against Proposition 14.

Since 1965, I have been President of the Fair Housing Council of San Mateo County. Since 1965, I have been a representative of the Housing Opportunities Committee of the Council for Civic Unity of the San Francisco Bay Area. The Housing Opportunities Committee has been a federation of the approximately 22 organizations in the San Francisco Bay Area whose major objective is working toward open housing and elimination of discrimination in the sale and rental of housing on the basis of color or ethnic background.

Since August, 1968 I have been Chairman of the San Francisco Barristers' Panel on Discrimination in Housing. Through this Panel I have received referrals of many cases of alleged discrimination, pri-

marily in the rental of housing. Members of the Panel have filed several actions in the United States District Court for the Northern District of California on behalf of black citizens, alleging violations of various federal and California statutory provisions with respect to discrimination in housing.

Both the Fair Housing Council of San Mateo County and the Housing Opportunities Council have provided a service whereby persons who have experienced or anticipate having difficulty in obtaining housing because of racial discrimination can obtain assistance in locating suitable housing which will be open to them and can also establish whether refusals to sell or rent are based upon racial discrimination.

My own experience has included making telephone calls and personal appearances for the purpose of determining whether racial discrimination was the basis for refusing to sell or rent housing. My personal experience with dozens of apartment house managers, apartment house owners, real estate brokers and salesmen, and residential building contractors has indicated that racial discrimination in housing in San Mateo County has been and continues to be almost universally present among persons in the housing industry. With the exception of a very few apartment house owners and managers and the 1965 statements by companies controlled by Carl Gellert in connection with construction of homes at Serra Monte, racial discrimination is not stated as the reason for a refusal to rent or sell housing to members of racial minorities. It has been my personal experience that

refusals ostensibly based upon economic or other grounds are, upon investigation, actually based upon racial discrimination.

From my experience as an attorney, as a participator in negotiations for the purpose of obtaining agreements from persons in the housing industry to publicize pledges to provide open housing, upon investigation through "testing" and other means, and from discussions with individuals and groups in the housing industry as to the basis for refusals to rent or sell housing, I have formed the opinion that discrimination in housing in San Mateo County on the basis of race and ethnic background prevails throughout the housing industry. I have also formed the opinion that the major method by which laws against open discrimination are evaded is by making most housing in San Mateo County economically beyond the means of most members of racial minority groups. It is my opinion that a referendum within the county or any city in San Mateo County, with respect to proposed low income housing would result in the primary issue being the admission or exclusion of members of racial minority groups. Based upon my experience within the county, it is my opinion that such a referendum would be defeated in every jurisdiction within the county.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Mateo, California, October 28, 1969.

/s/ Andrew H. Field

Exhibit E

[Title of Court and Cause]

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

AFFIDAVIT OF ELIZABETH LYMAN

State of California
County of San Mateo—ss.

Elizabeth Lyman, being duly sworn, deposes and says:

I am a citizen of the United States and a resident of Stanford, Santa Clara County. When the California Real Estate Association proposed and advocated Proposition 14, I personally called area realtors and told them why I was against the Proposition; and as a member of the Mid-Peninsula Citizens Against Proposition 14, I was able to wage a more elaborate campaign.

When the battle against Proposition 14 subsided, persons working with Mid-Peninsula Citizens Against Proposition 14 formed the Mid-Peninsula Citizens for Fair Housing in order to continue the fight for equal opportunity in housing. While that group was originally organized solely to encourage ethnic equality, it soon became apparent that very real problems pervaded the area of low-income housing as well. We

began to concentrate our efforts toward encouraging the development of decent, safe and sanitary public housing. Unfortunately, these efforts were largely thwarted by the operation of Article XXXIV. Housing Authorities and Municipal Governments claimed that public housing could not be developed because referendum on low-income housing would fail; individuals expressed concern about complexes of low-income housing going up in their neighborhoods with large numbers of black persons. A typical comment was, "I have nothing against a black family living next door, but I don't want a complex of them."

I have not lessened my efforts. I am presently a board member of the Peninsula Citizens for Fair Housing, and I am on the Executive Committee for Citizens for Mutual Understanding, an organization which primarily attempts to educate and expose the community to the concerns of unfair discrimination and unequal opportunities for housing; I am, as well, on the Fair Housing Task Force of the Stanford Mid-Peninsula Urban Coalition, and the Housing Sub-Committee of the San Mateo County Human Relations Commission.

In various ways, each group is trying to do something about the widespread discrimination in housing against blacks and persons of low income. I believe that discriminatory attitudes have effectively stopped public housing development on the peninsula, and the

removal of Article XXXIV would lend substantial support to our efforts in securing fair housing for all.

Dated: October 28, 1969.

/s/ Elizabeth Lyman

Subscribed and sworn to before me this 28th day of October, 1969.

(Seal)

/s/ Betty W. Carroll,
Notary Public in and for the
County of San Mateo, Calif.
My commission expires May 13, 1973.

Exhibit F

[Title of Court and Cause]

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

AFFIDAVIT OF BRAD REESE

State of California

County of San Mateo—ss.

Brad Reese, being duly sworn, deposes and says:

I am a citizen of the United States and a resident of Menlo Park, San Mateo County. From 1960 to 1965 I worked with the Fair Play Council, an organization which attempted to find housing for black persons. It was impossible to find housing in other than black ghettos. The response was always, "These homes are sure not for Negroes." My experience as Housing Chairman for the NAACP of South San Mateo County, as Co-Chairman of the Housing Committee of Citizens Against Racism in Redwood City, and as a member of the Housing Committee of the Human Relations Commission in San Mateo County has been the same. Owners and landlords are now aware that the law is against them, so they are subtly evasive—there are no outright refusals but instead, fishy stories. Blacks are continually told that apartments were just rented, even though later checks reveal that they are still available; owners don't open the door when they see that blacks are ringing the doorbell; realtors require black persons to go through long, detailed credit checks, and don't require the same for

white applicants; they also claim no one is available to show an apartment, or claim the apartment keys were misplaced. The worst practice occurs when landlords ask black applicants very personal, probing questions which invariably cause the applicants to leave. Many blacks become so discouraged they give up trying.

We have received many requests from persons of low income for help in obtaining housing, but we had to tell them we could do nothing. There is no housing available for them in the black ghettos which are filled to capacity; and even apart from discrimination, they cannot afford the rents in white neighborhoods.

I would not expect any community in this County to vote for a low-income housing project—the poor and the black are very distasteful to the white middle class. This would apply as well to Mexican-Americans. I don't know how it will be possible to provide housing for the poor unless Article XXXIV of the California State Constitution were no longer on the books.

Dated: October 29, 1969.

/s/ Brad Reese.

Subscribed and sworn to before me this 29th day of October, 1969.

(Seal)

/s/ Betty W. Carroll,
Notary Public in and for the
County of San Mateo, Calif.
My commission expires May 13, 1973.

Exhibit G

[Title of Court and Cause]

**AFFIDAVIT IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

AFFIDAVIT OF DR. HAVEN RICHARD DOANE

State of California

County of San Mateo—ss.

Dr. Haven Richard Doane, being duly sworn, deposes and says:

I am a citizen of the United States, and I have resided in San Mateo County for approximately 11 years. My formal involvement with fair housing began in 1964 when I worked with the County Committee Against Proposition 14. That organization attempted to counter the property rights versus human rights argument advocated by the real estate interests. When Proposition 14 passed, I worked with the Fair Housing Council of San Mateo County, which picketed segregated housing developments in the County, and made other attempts to encourage equal opportunity in housing.

In 1966 I assumed the Chairmanship of the Housing Sub-Committee of the Conference on Religion, Race and Social Concern. The Committee received numerous reports from the Information Centers around the County, about the overcrowded and sub-standard housing of low income persons. Many of those persons were being evicted, thrown out on the street, and unable to find other housing because of the

low vacancy rate. We were very much concerned about these problems, and were largely instrumental in getting the Leased Housing program set up in the County. Because of the continued widespread discrimination in San Mateo, the Leased Housing program has not been able to alleviate the critical housing shortage. People know that a federally-funded program imposes a fair housing requirement and so they do not wish to lease their homes to the Housing Authority.

I am presently the Chairman of the Council of Churches Housing Development Corporation, an organization whose primary purpose is to develop low-income housing in the County. The Committee obtained an option on 30 acres in Half Moon Bay for the purpose of developing a low-income housing project. The City Council of Half Moon Bay held a public meeting to discuss the proposal. Before the meeting was held, there were inflammatory newspaper accounts with undercurrents of discrimination, stating in effect that if a project were built Half Moon Bay would be turned into a ghetto. These sentiments were repeated at the meeting. It was clear that the residents wanted no part of a low-income project and our chances of developing one are almost zero. A referendum on such a project would surely fail.

Six months ago, I wished to sell my own home in the County, and I asked a realtor to place an ad listing it along with a statement that all persons could buy regardless of race. He refused to do so, stating that he would be in trouble with the Realtors Organi-

zation, and that other persons would refuse to list their properties with him—and this was a man who was rather sympathetic to the problems.

It is clear that discrimination abounds both in rentals and sales of homes to black persons, and the referendum requirement of Article XXXIV of the California Constitution for low-income housing allows these discriminatory attitudes to deprive poor persons of their right to safe, decent and sanitary housing.

Dated: October 29, 1969.

/s/ Dr. Haven Richard Doane

Subscribed and sworn to before me this 29th day of October, 1969.

(Seal)

/s/ Ruth A. Dyra,

Notary Public in and for the
County of San Mateo, Calif.

My commission expires June 21, 1971.

Exhibit H

[Title of Court and Cause]

**AFFIDAVIT IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

AFFIDAVIT OF JOHN RUTHERFORD

State of California

County of San Mateo—ss.

John Rutherford, being duly sworn, deposes and says:

I am a citizen of the United States and a resident of Santa Clara County. In 1964 I joined with the Mid-Peninsula Citizens Against Proposition 14 in attempting to inform the community that Proposition 14 would, in effect, give constitutional sanctity to racial discrimination. While we were successful in beating the Proposition in some areas, San Mateo County gave the Proposition a favorable vote. A certified copy of election results is attached hereto. After the election, the above group, renamed the Mid-Peninsula Citizens for Fair Housing, continued its efforts in trying to secure equal opportunity in housing through educational programs and legal action.

I am presently the Chairman of the Urban Coalition Task Force on Fair Housing, a member of the Housing Committee of the Human Relations Commission of San Mateo County, and a member of the Mid-Peninsula Citizens for Fair Housing. While Proposition 14 was ultimately declared unconstitutional, our case files show that discrimination against

blacks in housing is still widespread in San Mateo County. Outright refusals based on racial prejudice still occur, but most of the practices are more subtle. These include the jacking up of rents, difficulty in obtaining credit, having to pay the list rather than negotiated price, evasive techniques, and humiliating questioning.

A survey conducted in 1967 by the United States Navy, which covered San Mateo County and other communities, indicates that in San Mateo County there were many instances of hardcore discrimination—where persons refused to rent houses to black individuals or families. The survey indicates that 400 units discriminated against black persons; a partial list is attached.

Racial prejudice, coupled with economic prejudice, has been causing the failure of referendum on low-income housing. Article XXXIV of the California State Constitution is a decided deterrent to the development of public housing, which is greatly needed, and must be removed. As reported in the Realty Review, a publication of the San Jose State College, the vacancy factor in rentals dropped two years ago to 1%; because of their economic status, persons of low income are the ones substantially affected by the shortage.

My personal experience with the black ghetto in East Palo Alto shows that houses are overpriced and overcrowded; the roads are bad, and municipal services are deplorable. Unless public housing is provided, these people cannot move out and better their living

conditions; blacks and Mexican-Americans largely make up the low-income group in the whole of San Mateo County. It is unconscionable that federal money, which is available to provide decent, safe and sanitary housing for persons of low income, cannot be utilized because of discriminatory attitudes allowed and, indeed, mandated by the California Constitution.

Dated: November 3, 1969.

/s/ John B. Rutherford

Subscribed and sworn to before me this 3rd day of November, 1969.

(Seal)

/s/ Betty W. Carroll,
Notary Public in and for the
County of San Mateo, Calif.

My commission expires May 13, 1973.

Discriminatory Housing Moffett Field list referred to in Rutherford affidavit is omitted from this appendix but can be found in the record on appeal.

Page No. 17 16 15 14 13 12 11
GENERAL ELECTION, NOVEMBER 3, 1964
COUNTY OF SAN MATEO

15TH ASSEMBLY DIST PRECINCT NUMBER

PERFORMANCE OF
MUNICIPAL FUNCTIONS
BY COUNTY OFFICIALS

PROPERTY TAXATION
RELIEF IN EVENT
OF DISASTER

CONSERVATION
AMENDMENTS
NAMING CORPORATIONS

SALES AND RENTALS
OF RESIDENTIAL
REAL PROPERTY

TELEVISION
PROGRAMS

LOTTERY

RAILROAD
TRAIN CREWS

	11		12		13		14		15		16		17	
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
ALAMEDA	2257	368	1382	1418	1952	764	1361	1604	1787	1137	2418	2124	752	
ATHLINGTON	2897	506	1516	2090	2444	1084	2197	1593	1839	1870	3116	3230	813	
BAY	2634	789	1246	1355	2577	1355	1390	3180	3338	1072	2920	2134	2210	
BELMONT	5831	1334	3622	2137	5309	2137	4905	3370	8913	2208	6125	5536	2495	
BLYNDEN OUT	281	74	202	173	275	92	233	159	254	138	295	249	141	
PARALLONE	350	103	315	196	310	176	343	219	405	152	381	308	237	
BRANADA	331	98	308	173	273	158	354	168	377	138	179	323	209	
HALF MOON B	591	178	521	336	545	279	620	381	740	245	337	593	373	
DOOR OUT	56	28	63	41	65	33	89	41	105	28	37	80	55	
HILLSBOROUGH	2796	530	1410	2104	2472	927	2370	1326	1949	1727	3072	3229	414	
LA MONDA	184	60	175	101	173	83	175	123	199	96	584	189	109	
LAKE	1134	301	792	771	1095	407	968	680	1151	488	388	1227	828	
LCS TRANCOS	143	20	115	66	133	38	65	121	89	97	38	147	61	
PEALO OUT	1401	277	1013	844	1273	480	975	1016	1214	744	1539	1453	487	
ERLO PARK	8556	1802	5730	3354	7878	3240	8912	6388	7632	4272	2394	9390	3084	
CAES	2094	703	1915	1234	2001	985	2128	1334	2702	703	2287	1764	1550	
PISCADERO	122	53	136	77	114	72	174	76	168	76	149	154	81	
PORTOLA	1298	177	705	864	1097	414	790	868	884	751	1376	1364	255	
REDWOOD CITY	13845	4140	10807	8961	13265	5694	13161	8307	16200	5040	15319	13215	7646	
SAN CARLOS	7734	2436	5539	5426	7435	3078	7451	4292	8506	3149	8986	8246	3192	
SAN GREGORIO	32	17	37	23	39	19	50	19	57	8	38	80	20	
SAN MATEO	15142	3606	10640	10310	14005	5522	13373	8681	15465	6338	16648	15427	5894	
SAN MATEO OUT	1472	240	916	856	1259	502	872	1044	1193	700	1349	1474	392	
SELBY	1021	276	817	661	941	444	993	590	1140	411	1121	996	818	
KEYWOOD	49	6	26	33	44	16	25	35	25	38	54	52	10	
SKYLINE	219	60	175	123	213	66	175	145	197	122	243	225	87	
SUNSHIT	316	81	186	227	309	103	253	192	293	148	360	334	102	
WOODSIDE	1497	301	906	1038	1340	559	1241	826	1190	846	1638	1637	379	

ATHERTON	2257	506	1382	2080	1952	1361	1593	1787	1537	501	2418	2124	752
RAY	2897	1516	1516	2444	2444	2199	1809	1870	1870	607	3116	3230	513
SELYMONT	2634	789	2673	1246	2577	1355	3180	3338	1072	1355	2920	2134	2210
SELYMONT OUT	5831	1332	4196	3622	5309	2137	4905	5913	2200	1975	6125	5536	2495
PARALLONE	281	74	202	173	275	92	233	254	138	94	295	249	141
CRANADA	350	103	315	195	310	176	303	405	152	153	381	308	237
HALF MOON B	331	98	308	173	273	158	354	377	138	179	323	202	209
OVER OUT	591	178	321	336	545	279	381	740	245	337	593	555	373
HILLSCROUCH	56	28	63	41	65	33	89	105	28	37	80	67	55
LA HONDA	2796	830	1410	2104	2472	927	2370	1949	96	584	3072	3229	414
LAKE	184	60	175	101	173	83	175	199	96	102	189	178	109
LCS TRANCOS	1134	301	792	771	1035	407	968	1151	488	388	1227	1084	828
MENLO OUT	143	20	115	66	133	38	65	89	97	38	147	122	61
MENLO PARK	1401	277	1013	844	1273	480	975	1016	744	406	1539	1453	487
	8536	703	5730	7876	8912	6648	7632	2294	4272	2294	8648	8648	3084
GARS	2094	53	1915	1234	2001	985	1334	2702	76	1033	2287	1784	1550
PISCADERO	122	177	136	77	114	72	174	168	751	81	149	152	81
PORTOLA	1298	4140	705	864	1097	414	868	886	5040	257	1376	1364	255
REDWOOD CITY	13845	10807	8964	5694	13161	8307	16200	5040	8504	15319	13215	7546	7546
SAN CARLOS	7734	2436	5539	5426	7435	3078	4292	3149	2488	8986	8246	3192	3192
SAN GREGORIO	32	17	37	23	39	19	50	57	20	38	80	20	20
SAN MATEO	15142	3606	10310	5522	14005	8681	6338	15465	4804	16648	15427	8894	8894
SAN MATEO OUT	1472	240	916	896	1259	502	1040	1193	700	1549	1474	392	392
SELY	1021	276	817	661	941	444	590	1140	411	329	1121	996	918
SELYWOOD	49	6	26	33	44	16	35	25	38	6	84	52	10
SKYLINE	219	60	175	123	86	175	145	122	243	73	226	87	87
SUMMIT	316	81	186	227	213	103	192	197	148	90	360	334	102
WOODSIDE	1497	301	906	1038	559	828	846	1190	846	1638	1637	379	379
26TH	18362	48406	28743	68538	62544	75064	24328	74173	61583	31693			
TOTAL	74271	32616	68538	62544	75064	24328	74173						
ABSENTEE	3330	1688	4442	1508	3558	1634	2693	3671	2637	2335	3944	4418	1381
26TH	20047	49914	30377	49372	38484	65827	33074						
TOTAL	77601	57058	72093	66225	78638	26743	78591						
27TH	18202	54691	36277	28356	28304	36153	28594	67216	58708	37107			
TOTAL	64272	18202	54691	36277	28356	28304	36153	28594	67216	58708			
27TH	38249	56191	130349	85525	121006	58994	157599	70181					
COUNTY TOTAL	141875	111749	130349	129480	121006	58994	157599	70181					

STATEMENT OF RESULT OF VOTES CAST

GENERAL ELECTION, NOVEMBER 3, 1964

Page No.

County of San Mateo		11	12	13	14	15	16	17									
27TH ASSEMBLY DISTRICT	PRECINCT NUMBER	PERFORMANCE OF MUNICIPAL FUNCTIONS BY COUNTY OFFICERS		PROPERTY TAXATION: RELIEF IN EVENT OF DISASTER		CONSTITUTIONAL AMENDMENTS		NAMING CORPORATIONS		SALES AND RENTALS OF RESIDENTIAL REAL PROPERTY		TELEVISION PROGRAMS		LOTTERY		RAILROAD TRAIN CREWS	
		YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
BRISBANE		624	244	308	567	349	304	779	822	237	452	585	809	530	931		
BROADMOOR		1477	437	834	1390	633	776	1544	1706	561	713	1547	1315	1315	3378		
BURLINGAME		8263	2056	8467	7621	3195	4523	8557	3605	2746	836	9267	8601	67			
BLOME HILLS		476	89	330	401	174	264	393	221	78	57	836	838	37			
CLUB		55	20	34	51	29	19	69	25	35	57	57	52	81			
COLMA		96	35	51	90	43	52	113	48	63	103	90	81				
CALY CITY		13895	3894	7421	6331	13557	7958	15408	6710	14125	12056	8676					
ESTERO		124	28	85	102	60	67	85	46	121	109	26					
HILLSBOROUGH		243	54	198	223	80	108	142	268	293	2590						
HILLBRAE		5712	1435	3516	5200	2375	2900	6021	2343	2018	5680	4053					
PACIFICA		6284	1698	3101	5314	2801	3326	6953	3308	3177	8060	4053					
SAN BRUNO		8880	2432	5033	3840	6090	4700	10091	2195	3879	7959	3126					
SAN MATEO		6711	1730	3715	2722	8843	4840	7799	3244	2793	6972	3922					
FO SAN FRAN		9104	2851	5156	4472	9997	4775	11364	556	852	7775	6446					
WESTBOROUGH		576	154	254	247	840	312	618	290	63213	837	297					
27TH		17186	38533	27343	34926	61030	70240	1217	1406	2002	2243	37107					
TOTAL		62528	32176	80341	61030	70240	1217	1406	2002	2243	37107						
APSENTEE VOTE		1744	1044	744	963	1227	1227	2131	28598	29191	28708						
27TH		18202	36277	28304	36183	63285	72371	28598	29191	28708							
TOTAL		64272	54691	58256	63285	72371	28598	29191	28708								
STATE OF CALIFORNIA																	
COUNTY OF SAN MATEO																	
I, MARVIN CHURCH, County Clerk of the above named county, do hereby certify that the within is a true and correct Statement of the result of the Votes cast in this County on Proposition 14 at the General Election held																	

OVERSIZE PAGE SEE NEXT FRAME
FOR REMAINDER OF PAGE

	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
BRISBANE	624	244	667	308	567	349	779	304	822	237	452	585	530	809				
BROADMOOR	1477	437	1290	834	1390	633	1644	776	1706	561	713	1547	1315	931				
BURLINGAME	8263	2056	5816	8467	7621	3195	7870	4523	8557	3605	2746	9267	8601	3378				
BURGH HILLS	478	89	250	330	401	174	357	264	393	221	79	836	538	67				
CL'D	55	20	83	34	51	29	76	19	69	25	35	87	52	37				
COLMA	96	35	93	61	90	43	111	52	113	48	63	90	103	51				
DAILY CITY	13895	3894	12157	7421	12370	6331	13557	7958	13408	6730	6710	14128	12056	8676				
ESTERO	124	28	85	75	102	60	100	67	111	55	46	121	109	51				
HILLSBOROUGH	243	54	112	198	223	80	217	108	176	142	48	268	293	26				
VILLBRAE	5718	1435	4331	3316	5200	2375	5604	2900	6021	2343	2018	6310	5680	2590				
PACIFICA	6284	1698	5739	3101	5514	2801	6090	3326	6953	2343	3177	6060	8069	4053				
SAN BRUNO	8880	2432	7432	5033	8009	3840	6090	4700	10091	3308	3879	9242	7959	5126				
SAN MATEO	6711	1730	5506	3715	6129	2722	5345	4840	7799	2195	2793	6972	5850	3922				
TO SAN FRAN	9104	2851	8127	8156	4472	4472	9997	4775	11364	3244	4740	9481	7773	6446				
WESTBOROUGH	576	154	810	254	247	247	840	512	618	438	290	852	537	397				
27TH	17188	17188	38833	38833	27341	27341	34928	34928	11364	24378	65213	7773	36187					
TOTAL	62525	32178	86341	86341	61030	61030	70240	70240	37795	28465								
APSENTEE VOTE	1744	2044	2518	744	1915	963	2228	1237	2131	1217	1406	2002	2243	950				
27TH	18202	36277	36277	36277	28304	28304	36183	36183	25598	47218								
TOTAL	64272	84691	58256	58256	63255	63255	72371	72371	29191	58708								

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO

I, MARVIN CHURCH, County Clerk of the above named county, do hereby certify that the within is a true and correct Statement of the result of the Votes cast in this County on Proposition 14 at the General Election held November 3, 1964, as determined by the official canvass of the returns of the said election.

WITNESS my hand and official seal this 30th day of October, 1969.

MARVIN CHURCH, County Clerk

By *May A. Lister*
Deputy

Exhibit I

Title of Court and Cause]

AFFIDAVIT IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

AFFIDAVIT OF DOVIE RUTH WYLIE

State of California

County of San Mateo—ss.

Dovie Ruth Wylie, being duly sworn, deposes and says:

I am a citizen of the United States and a resident of San Mateo County. I am presently employed as Planner I of the San Mateo County Planning Commission. My job involves working with census data, and working on the Community Concern Study, the part of the general Plan Revision Program of San Mateo County which will attempt to define and incorporate the human element—what the people in the community think are the County's problems.

In April, 1969, the County of San Mateo requested that the California State Department of Finance conduct a Special Census in most of the unincorporated parts of the County, and in 10 of the 18 cities, in order to obtain a more accurate estimate of the total county population. This census was taken, and for areas in the County not surveyed, updated data was provided. Each city or unincorporated area had the option of including Special Data Questions, in addition to the Standard Questions. That list of Special Questions is attached to my affidavit.

In all areas a question relating to income level was asked, and in some areas a question relating to race was asked. The data has not been professionally evaluated to determine correlations between race and income, but such an evaluation can be done.

A relationship can be made, without professional evaluation, between race and income in East Palo Alto where the area is largely made up of black families. In areas where there are concentrations of black families, the median family income is markedly lower than in areas of white family concentration.

Based on my experience, I have formed the opinion that there are, in other areas of the county, a large number of black and Mexican-American families and individuals of low income; and I believe that if there was a professional evaluation of the cards processed in our special Census, it would support this opinion.

Dated: November 3, 1969.

/s/ Dovie Ruth Wylie

Subscribed and sworn to before me this 3rd day of November, 1969.

(Seal)

/s/ Betty W. Carroll,
Notary Public in and for the
County of San Mateo, Calif.

My commission expires May 13, 1973.

of

Shirley M. C.

[Faint, illegible handwriting, likely bleed-through from the reverse side of the page.]

Exhibit J

[Title of Court and Cause]

**AFFIDAVIT IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

AFFIDAVIT OF EMILY MARKS SKOLNICK

State of California
County of San Mateo—ss.

Emily Marks Skolnick, being duly sworn, deposes and says:

I am a citizen of the United States, and have been a resident of San Mateo County for 21 years. I have long been engaged in the fight for civil rights and equal opportunity. One of my first efforts, about eighteen years ago, was revitalizing the Mid-Peninsula Council for Civil Unity, an organization established to provide equality of right and opportunity regardless of race, religion, or ancestry. That organization set up a Fair Housing Committee, because blacks and orientals were unable to obtain housing in other than a few areas in the City of San Mateo. I am sad to say the situation today is very much the same.

I worked with the Mid-Peninsula Citizens Against Proposition 14 as Chairman of the Speakers Bureau, and I am presently a member of the Mid-Peninsula Citizens for Fair Housing. I work with the Council on Race, Religion and Social Concern, an organization which is encouraging equal opportunity in housing for blacks and for the poor; I worked as a member

of the Citizens' Advisory Board to the Fair Employment Practice Commission in California, working for fair employment as well as fair housing. I am the Vice-Chairman of the City of San Mateo's Human Relations Commission, and a member of the Urban Coalition Task Force on Fair Housing.

My efforts for equal opportunity have increased rather than decreased, because of the continued widespread discrimination in San Mateo County against blacks. I am personally aware that blacks are still denied housing because of their race. Black professionals, teachers, and mostly the poor suffer from this discrimination. The Director of the San Mateo County Housing Authority stated at a public meeting of the City of San Mateo's Human Relations Commission on September 30, 1969, that the Authority was unable to provide necessary low-cost housing because of Article XXXIV of the California State Constitution. He repeated this statement today at a public meeting held by the Board of Supervisors of San Mateo County, held to investigate the crisis of low-cost housing. The Director declared in addition that the County was indeed in a housing crisis with no available units to rent to low-income persons. I was at this meeting because on November 3, 1969, the City Council of San Mateo passed a resolution stating that the unavailability of adequate housing at a cost that can be met constitutes a grave threat to the well being of many of its citizens, and urged the Board of Supervisors, legislators, and HUD to increase their efforts to deal with the problem immediately. The City

Council found that many families resident in the City of San Mateo had insufficient income to pay for adequate housing.

A referendum in this County on public housing would absolutely fail because of prejudice against blacks and the poor. The black ghetto in the City of San Mateo is presently overpriced, overcrowded, and has a zero vacancy factor. The housing situation there, and elsewhere in the County, is critical. I want the removal of Article XXXIV because I care about providing decent, safe and sanitary housing for the poor, and I am against all discrimination in housing.

Dated: November 4, 1969.

/s/ Emily Marks Skolnick

Subscribed and sworn to before me this 4th day of November, 1969.

(Seal)

/s/ Betty Carroll,

Notary Public in and for the
County of San Mateo.

My commission expires May 13, 1973.

Exhibit K

[Title of Court and Cause]

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

AFFIDAVIT OF MARILYN CRALLE WIEBENSON

State of California,
County of San Mateo—ss.

Marilyn Cralle Wiebenson, being duly sworn, deposes and says:

I am a citizen of the United States, and a resident of Santa Clara County. I am a member of the League of Women Voters, which in 1968-69 made an intensive study of the problems of housing. When the Urban Coalition requested a member of the League to join its Task Force on Fair Housing, I did so, and am presently a member.

Recently, the Fair Housing Task Force conducted two surveys involving housing discrimination, one in Santa Clara County, and the other, the one I personally conducted, in San Mateo County. My method of survey largely focused on speaking with community organizations and representatives, which included the Information Centers around the County, and the Economic Opportunity Commission. On the basis of my work, I am able to conclude that there is widespread discrimination in housing against blacks, particularly in rentals, and that there are areas like East Menlo Park and East Palo Alto which are made up largely of black families of low income.

I believe that these discriminatory attitudes against blacks in housing would be exercised if a referendum for low-income housing were held in San Mateo County, and the referendum would likely fail.

Dated: November 4, 1969.

/s/ Marilyn Cralle Wiebenson.

Subscribed and sworn to before me this 4th day of November, 1969.

(Seal)

/s/ Betty W. Carroll,

Notary Public in and for the
County of San Mateo.

My commission expires May 13, 1973.

I, Glenn Brown, Editor of the Advance Star, do hereby swear and certify that the attached is a true and correct copy of the newspaper article printed on Wednesday, November 5, 1969, reporting the public meeting of the San Mateo County Board of Supervisors held on the housing situation in San Mateo County.

Dated: November 17, 1969.

/s/ Glenn Brown

Subscribed and sworn to before me this 17th day of November, 1969.

(Seal)

/s/ Betty W. Carroll,

Notary Public in and for the
County of San Mateo.

My commission expires May 13, 1973.

(Newspaper Article omitted from appendix)

RESOLUTION No. 115 (1969)**Urging Revitalization of the San Mateo County Housing Authority and Consideration of Adjustments in the Income and Rental Ceiling Criteria**

Resolved, by the City Council of the City of San Mateo, California, that:

Whereas, many families resident of this City have insufficient income to pay for adequate housing;

Whereas, the Congress of the United States has enacted legislation, commonly known as the Rental Assistance Program, for the express purpose of making funds available with which to make up the difference between the cost of decent housing and what these citizens (and others in the same straits elsewhere in the United States) can afford;

Whereas, said program for rental assistance is administered nationally by setting income and rental ceilings as a function of family size and by allocating quotas to various local administrative agencies;

Whereas, said income and rental ceilings do not give due consideration to the great differences in housing and living costs and average income per capita between one part of the country and another.

Whereas, this City is in an area of the United States with one of the highest housing and living costs and average income, and the cost of most housing exceeds the established ceilings under said program;

Whereas, only 148 of the 418 qualified families in this City who have applied for rental assistance have been provided housing under said program and some

applicants, for whom housing has not been found, have been on a waiting list for as many as 18 months;

Whereas, many of the 148 families for whom housing has been found are in danger of losing their housing because of imminent rent increases which will place their costs above the established ceilings;

Whereas, it has been reported in the press that the San Mateo County Housing Authority is in a state of both financial and administrative collapse, and thus may not be in a position to protect the rights and interests of the citizens of this City who are qualified to receive assistance under said program; and

Whereas, even if rental cost ceilings were not a barrier, the family income criteria excludes many additional families whose income, though exceeding the nationally established standards, is still inadequate to permit them to obtain decent housing on the local market.

Now, Therefore, It Is Hereby Determined and Ordered, that:

1. The availability of adequate housing at a cost which can be met constitutes a grave threat to the well-being of many of the citizens of San Mateo.

2. The Board of Supervisors of the County of San Mateo be, and they are hereby, respectfully requested to take such steps as are necessary to revitalize the San Mateo County Housing Authority.

3. The Secretary of the Department of Housing and Urban Development be, and he is hereby, respectfully urged to make such adjustments in the

income and rental ceiling criteria as are necessary to reflect local housing, cost of living and income standards and that Senators Murphy and Cranston and Representative McCloskey be, and they are hereby, respectfully requested to use their best offices toward the implementation of these changes.

4. The City Clerk be, and he is hereby, ordered to cause a certified copy of this resolution to be forwarded to the Board of Supervisors of the County of San Mateo, the Honorable Secretary of the Department of Housing and Urban Development, Senators Murphy and Cranston and Representative McCloskey.

/s/ Hugh A. Wayne,
Mayor.

Attest: William J. O'Farrell,
City Clerk.

(Seal) By: /s/ Mary Rose,
Chief Deputy City Clerk.

(Certification omitted)

October 22, 1969

Hayes, et al. vs. Housing
Authority of San Mateo County
#C-69-1

Hon. Robert F. Peckham,
Judge of the U.S. District Court,
Federal Building,
Golden Gate Avenue,
San Francisco, California.

Dear Judge Peckham:

Supplementing my letter of October 6th addressed to you, to the attention of your Clerk, Mrs. Rosemary Miller, at your courtroom in San Jose, relative to the above-entitled matter, please be advised as follows: That at the regular meeting of the Housing Authority held October 21st, and at an earlier special meeting called for this purpose, the matter of the above action was discussed, and I, as attorney for the Housing Authority, have been directed by them not to appear formally in said action, and consequently no appearance by way of pleading will be made therein.

By virtue of the fact that this action has been consolidated with *Valtierra, et al., vs. Housing Authority of the City of San Jose, et al.*, C.A. #52076, which I understand involves the same issues, the question as to the constitutionality of Article XXXIV of the

Constitution of the State of California will undoubtedly be resolved.

Very truly yours,
Hugh F. Mullin, Jr.,
Attorney for the Housing Authority
of the County of San Mateo.

HFM: sgh

cc: C. C. Evensen, Clerk of
U.S. District Court
Legal Aid Society of
San Mateo County

Wm. Glenn Weman, Executive Director
Housing Authority, San Mateo County

Messrs. Ichinose, Albrecht, Bygdnes,
Rucker & Tassos, Commissioners.

CIVIL DOCKET

United States District Court
Three Judge Court:
Judges Hamlin, Peckham & Levin

S.J.

C-69-1

Attorneys
For plaintiff:
Legal Aid Society of S.M.C.
2221 Broadway
Redwood City, CA. 94063
Legal Aid Society of S.M.C.
1238 Willow Road
Menlo Park, CA. 94025

Gussie Hayes, et al.,

vs.

Housing Authority of San Mateo County,
et al.,

STATISTICAL RECORD

J.S. 5 mailed 10/1/69 (Date - 10-2-69) (Name or Receipt No. - 70706)

(Rec. - 15.00)

(Date - Oct 3 1969) (Name or Receipt No. - CD1-28)

(Disb. - 15.00)

J.S. 6 mailed

Basis of Action: Civ. R. Compl. Civil Rights Act. Seeks 10,000.00

Docket Entries—C-69-1-RFP—"B"
Gussie Hayes, et al. v.
Housing Auth. of San Mateo County, et al.
Proceedings

1969

Oct. 1—

1. Filed Complaint. Issued Summons: Three Judge Court Requested

Oct. 1—

2. Filed pltfs memo of pts & auths in support of complaint.

Oct. 1—

3. Filed affidavit of Lois P. Sheinfeld.

Oct. 1—

4. Filed ord for private process. (Clerk)

Oct. 1—

5. Filed pltfs notice of mo & mo to convene 3 Judge Court, 10-10-69.

Oct. 1—

6. Filed pltfs notice of mo & mo for consolidation, 10-10-69, 10:AM.

Oct. 1—

7. Filed summons on ret, exec 1 Oct. 69.

Oct. 10—

ORD aft hrg, pltfs mo to consolidate with 52076 granted; three judge court will convene to hear responsive pleadings 11-14-69 (Peckham)

Oct. 13—

8. Filed notification & cert. to Judge Chambers that action appears to be one requiring formation of 3 judge court. (Peckham)

Oct. 16—

9. Filed ORD convening THREE JUDGE COURT Consisting of Judge Oliver D. Hamlin, Judge Robert F. Peckham & Judge Gerald S. Levin. (Chambers)

Oct. 28—

10. Filed pltfs notice of mo & mo for default judgment, 11-14-69, 10 A.M.

Oct. 28—

11. Filed ORD that time for noticing pltfs mo for default judgment be shortened from 21 to 15 days. (Peckham)

Oct. 31—

12. Filed pltfs cert of svc of notice of mo & mo for default judgment etc.

Nov. 4—

13. Filed clerk's notice of cont. hrg of motions to 11-20-69, 10 AM, San Jose

Nov. 6—

14. Filed pltfs notice of mo & mo for sum. judgment, 11-14-69, 10 AM, San Jose

Nov. 6—

15. Filed pltfs affidavits in support of pltfs mo for sum. judgment.

Nov. 6—

16. Filed ORD that time for noticing pltfs mo for sum. judgmt be shortened to 7 days.
(Peckham)

Nov. 10—

17. Filed pltfs cert of svc of notice of mo & mo for sum. judgmt.

Nov. 12—

18. Filed Clerk's notice of THREE JUDGE HEARING on motions, 11-20-69, 10 AM, San Jose.

Nov. 17—

Received from Legal Aid Society, Resolution No. 115, as an attachment to Exh. "J"
(affidavit support. plttf's mo. for sum. judg.)
(Orig. & (sic)

Nov. 18—

Received from Legal Aid Society, copy of Newspaper article, as an attachment to Exh. "J" (affidavit support. plttf's. mo. for sum. judg.) (orig. & 3)

Nov. 18—

19. Filed pltfs cert of svc of an attachment to exhibit "J".

Nov. 20—

Ord. aft. 3 Judge hearing, mo. of deft. City of San Jose to dismiss, mo. of Deft. San Jose Housing Auth. to dismiss, Fed. defts. mo. to dismiss. & pltffs' appli. for prer. injunc. in action 42076 (in action C69-1 hrg. was for return on O.S.C. re prelim. injunc.) defts' coun-

sel to file fur. affidavits by Dec. 1, 1969; plttfs' counsel to file counter affidavits by Dec. 8, 1969; upon receipt of said affidavits the various mos. will be deemed submitted to the 3 judge court. (Hamlin, CJ, Peckham & Levin, (DJ's)

See Sheet B

1970

Mar. 23—

Filed memo of Decision & order; ord. that Federal defts mo for dismissal granted; plttfs. mo fro sum. judg. decaring article XXXIV to be unconstitutional & and their appli. for injunc. granted. (Hamlin, Peckham & Levin)

April 1—

Filed defts mo to amend decision dtd 3-23-70 & ORD shortening time for hrg on mo to 4-2-70, 2 PM. (IN 52076) (Peckham)

April 2—

THREE JUDGE HRG, ORD defts mo for stay of inj submitted & denied.
(Hamlin, Levin & Peckham)

April 2—

Filed ORD granting plttfs mo for sum. judgmt, declaratory judgmt & perm. inj. (IN 52076)
(Hamlin, Peckham & Levin)

April 10—

Filed joint Notice of Appeal to the Supreme Court of the United States in Civil 52076 & C-69-1-RFP filed in 52076

April 10—

Filed Designation of Record on Appeal in
52076

April 10—

Filed Defendant's amended designation of
contents of record on Appeal in 52076

April 13—

Filed Order to expedite appeal to the U.S.
Supreme Court it is Ordered that the Clerk of
the Court prepare & send the record of these
two consolidated cases up to the Supreme
Court within five (5) days in 52076
(Peckham)

April 20—

Made, Mailed Record on Appeal Supreme
Court of the U.S.

April 20—

Filed ORD of DISMISSAL of complaint as
to Federal debts w/prejudice. (Cys mailed)
(IN 52076) (Hamlin, Peckham & Levin)

May 6—

Filed Stipulation of Counsels that the Xerox
copies certified by the Clerk of the District
Court for the Northern District of California
as the Record on Appeal are true copies of
the originals in Civil 52076

May 7—

Re Made, Mailed Record on Appeal Supreme
Court of the United States

June 1—

Filed certificate of clerk to record on appeal
in 52076

Original Filed March 23, 1970,
Clerk, U.S. Dist. Court,
San Francisco

The United States District Court
Northern District of California

Anita Valtierra, et al.,

Plaintiffs,

vs.

The Housing Authority of the City of
San Jose, et al.,

Defendants.

No. 52,076

Gussie Hayes, et al.,

Plaintiffs,

vs.

Housing Authority of San Mateo,

Defendant.

No.

C-69-1-RFP

Before HAMLIN, Circuit Judge, and PECKHAM and
LEVIN, District Judges.

PECKHAM, District Judge:

This matter comes before this Court on plaintiffs' motions for summary judgment, their applications for an injunction, and defendants' motions to dismiss. Plaintiffs ask that we declare Article XXXIV of the California State Constitution¹ to be unconstitutional

¹ARTICLE XXXIV

PUBLIC HOUSING PROJECT LAW

§ 1. Approval of electors; definitions

Section 1. No low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any state

and request that we forbid defendants from relying upon it as a reason for not requesting federal assistance with which to finance low-income housing. We hold Article XXXIV to be unconstitutional. *Hunter v. Erickson*, 393 U.S. 385 (1969).

Title 42 U.S.C. § 1983 creates a cause of action for the deprivation, under color of state law, of any right, privilege or immunity guaranteed by the United States Constitution. In this case, the non-federal defendants are acting under color of Article XXXIV in not requesting federal assistance. Equal protection cases brought to remedy discrimination against the poor (e.g., *Rinaldi v. Yeager*, 384 U.S. 305 (1966); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Shapiro v. Thompson*, 394 U.S. 618 (1969)),

public body until, a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire the same, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.

For the purposes of this article the term "low rent housing project" shall mean any development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a state public body or to which the Federal Government or a state public body extends assistance by supplying all or part of the labor, by guaranteeing the payment of liens, or otherwise. For the purposes of this article only there shall be excluded from the term "low rent housing project" any such project where there shall be in existence on the effective date hereof, a contract for financial assistance between any state public body and the Federal Government in respect to such project.

For the purposes of this article only "persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the state public body developing, constructing, or acquiring the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

have long been entertained under § 1983. Jurisdiction to hear this case is conferred upon this Court by 28 U.S.C. § 1343(3), (4).

This case is required to be heard by a three-judge court by 28 U.S.C. §§ 2281, 2284, as plaintiffs seek an injunction enjoining defendant local officials from enforcing a state constitutional provision (see *A.F.L. v. Watson*, 327 U.S. 582 (1946)) on the ground of its repugnance to the Equal Protection Clause.

Two cases are consolidated for consideration. The first is *Valtierra v. Housing Authority of San Jose*, No. 52076. The parties plaintiff are "persons of low income," who have been determined to be eligible for public housing, and have been placed on the appropriate waiting lists. They are unable to occupy public housing because at present none is available. The second case, *Gussie Hayes, et al. v. Housing Authority of San Mateo*, No. C-69-1-RFP, is consolidated with the first because of the identity of the legal issue, and is brought by similarly situated poor persons, predominately Negro, on the waiting list for public housing in San Mateo County.

Plaintiffs have demonstrated that Article XXXIV has impeded the financing of new housing, only 52% of the referenda submitted to the voters have been approved, even though they cannot of course demonstrate that any particular named plaintiff would be able to occupy new housing if such housing were built. In Santa Clara County, the voters defeated the referendum seeking permission to obtain housing funds in 1968, and in San Mateo County two similar

referenda were defeated in 1966. Housing Director Wemen, in San Mateo County, feels it would be fruitless to attempt another referendum at present. [Affidavit J to *Hayes* complaint.] Plaintiffs' position is that but for the existence of Article XXXIV, local housing authorities would be able to apply for federal assistance if they chose; they further submit that there is evidence that in fact they would so choose. [See *Valtierra* complaint p.8].

There are three groups of defenders in the *Valtierra* case: the Housing Authority of the City of San Jose, a public entity, and its members in their official capacity; the City Council of San Jose, a public entity, and its members, in their official capacity; and the Department of Housing and Urban Development and its Secretary, George Romney. All three groups have filed responsive pleadings. There is only one defendant in the *Hayes* case, the Housing Authority of San Mateo County. The Court notes that this defendant has not made an appearance in the case, but rather has chosen to stand mute.

The federal defendants, the Department of Housing and Urban Development (HUD), and its Secretary, George Romney, move for dismissal on the ground that, as to them, the *Valtierra* complaint does not state a claim upon which relief can be granted. Fed.R.Civ.P. Rule 12(b)(6). The complaint does not seek any relief against the federal defendants; their joinder is not necessary in order to grant the relief that is requested. Therefore this Court ORDERS that their motion for dismissal be granted. Accord-

ingly, the federal defendants are dismissed from this lawsuit. The *Hayes* case does not involve any federal defendants.

The two non-federal defendants in the *Valtierra* case, viz, the Housing Authority of San Jose, and the City Council of San Jose, raise several pleas in abatement which do not preclude this Court from reaching the merits of plaintiffs' constitutional claim. First, defendants contend that because California could decline to participate in the program established by the Housing Act of 1937, that California can participate on any condition. This is not the case. Certainly a condition that no Negro could occupy such low-income housing would be unconstitutional. Second, they assert that referenda are not subject to constitutional scrutiny. This is not the law. *Hunter v. Erickson, supra*. Third, defendants erroneously believe plaintiffs are asking this Court to compel the Housing Authorities to seek federal funding. However, plaintiffs only seek an injunction forbidding the named local officers from relying on Article XXXIV as a reason for not requesting such funds. There may be any number of reasons, quite apart from Article XXXIV why the Housing Authorities might not wish to seek federal funds at any given point in time.

We find plaintiffs' Supremacy Clause argument to be unpersuasive and therefore do not decide the case on that ground. Plaintiffs' privileges and Immunities argument is not reached as this Court decides the case on Equal Protection grounds.

Plaintiffs' Equal Protection Argument

The starting point for this argument is the now well-established standard that classifications based on race are "constitutionally suspect," *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), and those based on property "traditionally disfavored," *Harper v. Virginia Board of Elections*, 383 U.S. 663, 668 (1966). Both bear a far heavier burden of justification than other classifications. See, *McLaughlin v. Florida*, 379 U.S. 184, 194 (1964).

The gravamen of plaintiffs' Equal Protection claim is that the express discrimination in Article XXXIV, as it applies only to "low-income persons", brings it squarely within the ban of a long line of Supreme Court decisions forbidding the unequal imposition of burdens upon groups that are not rationally differentiable in the light of any legitimate State legislative objective. *E.g.*, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Carrington v. Rash*, 380 U.S. 89 (1965); *Baxstrom v. Herrold*, 383 U.S. 107 (1966); and *Rinaldi v. Yeager*, 384 U.S. 305 (1966). As characterized by the Court in *McLaughlin v. Florida*, 379 U.S. at 191:

Judicial inquiry under the Equal Protection Clause, . . . does not end with a showing of equal application among the members of the class defined by the legislation. The courts must reach and determine the question . . . whether there is an arbitrary or invidious discrimination between those classes covered . . . and those excluded.

It is no longer a permissible legislative objective to contain or exclude persons simply because they are poor. *Edwards v. Calif.*, 314 U.S. 160 (1941); *Shapiro v. Thomson*, 394 U.S. 618 (1969); *Cf., Griffin v. Illinois*, 351 U.S. 12, 16-17 (1956).

In addition to asserting that Article XXXIV denies equal protection of the laws to persons who are poor, the *Hayes* plaintiffs assert that it also denies equal protection to those who are Negro. Although Article XXXIV does not specifically require a referendum for low-income projects which will be predominantly occupied by Negroes or other minority groups, the equal protections clause is violated if a "special burden" is placed on those groups by the operation of the challenged provision, if "the reality is that the law's impact falls on the minority." *Hunter v. Erickson*, *supra*, at 391.

Thus, last term, the Supreme Court in *Hunter v. Erickson*, *supra*, applied to the housing area the constitutional requirement for equal protection. In that case, the Supreme Court invalidated an amendment to the City Charter of Akron, Ohio, which required a referendum before anti-discrimination legislation could be enacted. The Court held this to be impermissible, stating that it violated the Equal Protection Clause for at least three reasons:

First, only laws designed to end housing discrimination were required to run the gauntlet of a referendum, and the state cannot make it more difficult to enact legislation on behalf of one group than on behalf of others. The *Hunter* court speaking through Mr. Justice White states, 393 U.S. at 390-91:

It is true that the section [requiring a referendum before action may be taken] draws no distinction among racial and religious groups. Negroes and whites, Jews and Catholics are all subject to the same requirements if there is housing discrimination against them which they wish to end. But § 137 [requiring the referendum] nevertheless disadvantages those who would benefit from laws barring racial . . . discrimination as against those who would bar other discriminations or who would otherwise regulate the real estate market in their favor. The automatic referendum system does not reach housing discrimination on sexual, or political grounds, or against those with children or dogs, nor does it affect tenants seeking more heat or better maintenance from landlords, nor those seeking rent control, urban renewal, public housing, or new building codes.

Second, the law's impact falls on minorities, resulting in an impermissible burden which constitutes a substantial and invidious denial of equal protection.

"Moreover, although the law on its face treats Negro and white, Jew and gentile in an identical manner, the reality is that the law's impact falls on the minority. The majority needs no protection against discrimination and if it did, a referendum might be bothersome but no more than that. Like the law requiring specification of candidates' race on the ballot [citation omitted], § 137 places special burdens on racial minorities within the governmental process. This is no more permissible than denying them the vote, on an equal basis with others. [citations omitted] 393 U.S. at 391."

Lastly, the Court noted, 393 U.S. at 392:

... [I]nsisting that a State may distribute legislative power as it desires and that the people may retain for themselves the power over certain subjects may generally be true, but these principles furnish no justification for a legislative structure which otherwise would violate the Fourteenth Amendment. Nor does the implementation of this change through popular referendum immunize it. [Citations omitted.] The sovereignty of the people is itself subject to . . . constitutional limitations. . . .

Here, as in the *Hunter* case, the "special burden" of a referendum is not ordinarily required; here, as in the *Hunter* case, the impact of the law falls upon minorities.² The vice in this case is that Article XXXIV makes it more difficult for state agencies acting on behalf of the poor and the minorities to get federal assistance for housing than for state agencies acting on behalf of other groups to receive financial federal assistance. In California, state agencies may seek federal financial aid, without the

²That minority groups comprise "the poor" is increasingly clear. In his affidavit, Mr. Franklin Lockfield, Senior Planner for the Santa Clara County Planning Department stated: "The low-income areas are closely related to the areas of concentration of minority residents and high income areas are closely related to the nearly all white sections of the community. . . . In 1960, only 5% of the units occupied by white-non-Mexican-Americans were in delapidated or deteriorated condition, while 23% of the units occupied by Mexican-Americans and 20% of the units occupied by non-whites were in delapidated or deteriorated condition. Minorities were thus over represented in the less than standard housing by greater than four to one, and occupied nearly one-third of the deteriorating and delapidated housing in the County in 1960."

burden of first submitting the proposal to a referendum, for all projects except low-income housing. Some common examples, *inter alia*, are: highways, urban renewal, hospitals, colleges and universities, secondary schools, law enforcement assistance, and model cities. Further, even though federal assistance for state housing agencies is a privilege which California need not seek at all, the requirements of equal protection must still be met. *U.S. v. Chicago, M., St.P. & P. RR.*, 282 U.S. 311, 328-29 (1931); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *Shapiro v. Thomson*, *supra*.

Defendants argue that Article XXXIV does not violate the Equal Protection Clause because it was not the product of unconstitutional motivations. However, although proof of bad motive may help to prove discrimination, lack of bad motive has never been held to cure an otherwise discriminatory scheme. Certainly *Hunter* does not demand a demonstration of improper motivation.

Accordingly, plaintiffs' motions for summary judgment, declaring Article XXXIV to be unconstitutional, and their applications for an injunction are granted.

It Is So Ordered.

Oliver D. Hamlin,
United States Circuit Judge
Robert F. Peckham,
United States District Judge
Gerald S. Levin
United States District Judge

Filed Apr 2 1970,
C. C. Evensen, Clerk

(Title of Court and Cause)

**ORDER GRANTING PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT; DECLARA-
TORY JUDGMENT AND PERMANENT IN-
JUNCTION**

The above entitled matters having heretofore been consolidated for all purposes and the motions of plaintiffs for summary judgment having been presented and the Court being full advised, and having considered the pleadings, motions and affidavits, and after hearing oral arguments, and the Court having determined that there is no genuine issue of material fact,

The Court finds that the plaintiffs in both causes are entitled to summary judgment as a matter of law.

Therefore it is Ordered, Adjudged and Decreed that:

A. The motions of Plaintiffs for summary judgment in their favor are granted;

B. Article XXXIV of the California Constitution is declared unconstitutional and shall have no further force and effect for the reasons set forth in this Court's opinion filed March 23, 1970;

C. The defendants, The Housing Authority of San Mateo County, a public entity; William G. We-man, individually and as Executive Director of the Housing Authority of San Mateo County; Benjamin Ichinose; Ben Albrecht; Perry A. Bygdnes; Raymond

Rucker and James A. Tassos, individually and in their official capacities as Commissioners of the Housing Authority of San Mateo, their successors in office, agents, servants, employees and attorneys and all other persons in active concert or participation with them be and hereby are permanently restrained and enjoined from abiding by or relying upon Article XXXIV as a reason for not requesting state or federal assistance with which to finance low income housing;

The defendants, The Housing Authority of the City of San Jose, a public entity; Rodmar H. Pulley, Mary R. Boyce, Walter Rector, David Reiser, Allen Belandi and Sam Obregon, in their official capacities; the City Council of the City of San Jose, Ronald James, Virginia C. Shaffer, Joseph Colla, Walter V. Hays, David J. Goglio, Kurt Gross, in their official capacities; their successors in office, agents, servants, employees and attorneys and all other persons in active concert or participation with them, be and hereby are permanently restrained and enjoined from abiding by or relying upon Article XXXIV as a reason for not requesting state or federal assistance with which to finance low income housing.

Dated: April 2, 1970.

/s/ Oliver D. Hamlin,
United States Circuit Judge,
/s/ Robert F. Peckham,
United States District Judge,
/s/ Gerald S. Levin,
United States District Judge.